

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Appellant,

vs.

AMERICAN BROADCASTING
COMPANIES, INC.; THE
ASSOCIATED PRESS; CABLE NEWS
NETWORK, INC.; CHESAPEAKE
MEDIA I, LLC, D/B/A KSNV-TV; LOS
ANGELES TIMES
COMMUNICATIONS, LLC; THE NEW
YORK TIMES COMPANY; SCRIPPS
BROADCASTING HOLDINGS LLC
D/B/A KTNV-TV; WP COMPANY
LLC D/B/A THE WASHINGTON
POST AND LAS VEGAS REVIEW-
JOURNAL,

Respondents.

Case No.: 75518

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, the Honorable Stefany Miley
Presiding

EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)
(Relief needed by May 2, 2018)

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Attorneys for Appellant Las Vegas Metropolitan Police Department

Appellant, the Las Vegas Metropolitan Police Department (“LVMPD”), by and through its attorneys of record, Marquis Aurbach Coffing, hereby moves this Court for emergency stay relief of the District Court’s: (1) March 2, 2018 “Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. §239.011/Petition for Writ of Mandamus” (**Exhibit 1**) and (2) March 9, 2018 “Order Regarding Public Records Request” (**Exhibit 2**) pursuant to NRAP 27(e).

I. INTRODUCTION AND OVERVIEW OF RELIEF REQUESTED

LVMPD challenges the District Court’s order determining that the public’s interest in access to various public records¹ relating to the shooting at the Route 91 Music Festival on October 1, 2017 (“1 October Shooting”) outweighs any interest LVMPD has in non-disclosure. **Exhibit 1.** LVMPD further challenges the District Court’s order limiting the fees that LVMPD may charge in producing the Requested Records. **Exhibit 2.** LVMPD requested the District Court to stay both orders pending resolution of the instant appeal. **Exhibit 3.** The District Court, however, denied LVMPD’s motion and dissolved its previous order staying the case until April 27, 2018. **Exhibits 4 and 5.**² As a result, LVMPD will suffer irreparable injury if it is forced to comply with the Orders and produce the records.

¹ Respondents have sought the following records: 911 calls, body camera footage, dash cams, public and private CCTV footage, evidence logs, dispatch information, interview reports, search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and information on any weapons obtained during the investigation into the 1 October Shooting (the “Requested Records”). **Exhibit 1.**

² Respondents have not prepared an order denying the motion to stay; thus, LVMPD relies on the minutes of the hearing held on April 10, 2018. **Exhibit 4.**

LVMPD now seeks stay relief pending appeal from this Court before the May 2, 2018 expiration of the automatic stay in accordance with NRCP 62(a). No bond should be required because LVMPD is a government entity. NRCP 62(e); NRS 20.040.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Respondents initiated the underlying case challenging LVMPD's position on the confidential nature of the Requested Records. **Exhibit 6.** After briefing and argument, the District Court determined that the Requested Records were presumptively public records and that LVMPD failed to meet its burden to demonstrate that the Requested Records are confidential. **Exhibit 1.** The District Court also concluded that the public's interest in access outweighed any interest LVMPD has in non-disclosure and ordered all Requested Records to be disclosed within six months. *Id.* During the February 7, 2018 hearing, however, the District Court concluded that LVMPD was entitled to fees in producing the Requested Records in accordance with NRS Chapter 239. *Id.*

The District Court only considered LVMPD's on-going investigation argument and its privacy concern as recognized under the Freedom of Information Act ("FOIA"). *Id.* In performing the balancing test, the District Court did not even acknowledge LVMPD's interest in protecting its investigative techniques and procedures as considered in *Donrey of Nevada v. Bradshaw*, 106 Nev. 630, 635-36, 798 P.2d 144, 148 (1990) and identified as an exemption under FOIA. *Id.* Specifically, Exemption 7(E) of FOIA protects records compiled for law enforcement purposes from disclosure if those records "would disclose techniques

and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” 5 U.S.C. § 552(b)(7)(E). Exemption 7(E) only exempts investigative techniques not generally known to the public. *Rosenfeld v. U.S. Dep't of Justice*, 57 F.3d 803, 815 (9th Cir.1995). Finally, NRS 289.830 permits inspection of the Body Worn Camera footage if such video contains confidential information. These are all significant legal issues this Court has not yet addressed.

To determine what fees LVMPD could assess, the District Court ordered supplemental briefing and heard additional arguments. **Exhibit 2.** LVMPD further challenges the District Court’s order limiting the fees LVMPD may charge in producing the Requested Records. *Id.* The fees a governmental entity may charge in producing public records are governed by NRS 239.052 and NRS 239.055. NRS 239.055 governs when production requires the extraordinary use of personnel or technological resources. In its supplemental brief, LVMPD argued that NRS 239.055 permits governmental entities to charge for staff time when such extraordinary use is required. **Exhibit 7.** Ultimately, the District Court concluded that NRS 239.055 applied only to documents and not electronic records. **Exhibit 2.** As such, the District Court ordered that Body Worn Camera footage and 911 calls were not subject to NRS 239.055, and LVMPD is only permitted to charge the actual costs to reproduce the records onto medium for transfer and the cost of such medium. *Id.* The District Court also ordered that production of the remaining public records were subject to NRS 239.055, but that LVMPD may

charge \$0.31 for copying costs per page and an additional \$0.50 for extraordinary services, totaling \$0.81 per page. *Id.* Pursuant to NRS 239.055, the District Court ordered LVMPD to provide Respondents with an estimate of the fees allowed in accordance with the Order and permitted Respondents to make six equal monthly installments of the same. *Id.* The District Court also required LVMPD to begin production of the public records within three days from the date of the Order. *Id.*

LVMPD moved the District Court to reconsider its previous orders. LVMPD also requested the District Court to stay the Orders until a decision on the motion for reconsideration was entered. **Exhibit 8.** The District Court granted the stay until April 27, 2018, at which time the District Court would consider the motion for reconsideration. *Id.* LVMPD filed its notice of appeal on March 30, 2018. **Exhibit 9.** After reviewing the record in its entirety, LVMPD chose to forego its motion for reconsideration and pursue its appeal to the Nevada Supreme Court. **Exhibit 4.** In doing so, LVMPD moved the District Court to stay the Orders pending resolution of this appeal. **Exhibit 3.**³ At the April 10, 2018 hearing, the District Court denied LVMPD's motion for stay pending appeal, denied the motion for reconsideration, and dissolved its previous order staying the Orders, which is why LVMPD now seeks emergency stay relief from this Court. **Exhibits 4 and 5.**

³ LVMPD sought to extend the stay because it was foregoing its motion for reconsideration, rendering the previous stay moot.

III. LEGAL ARGUMENT

A. STANDARDS FOR GRANTING A STAY PENDING APPEAL.

1. NRAP 8 Considerations.

A stay will protect the appellant from the judgment's immediate consequences while the reviewing court determines whether reversible error occurred. *Edwards v. Ghandour*, 123 Nev. 105, 117, 159 P.3d 1086, 1094 (2007). Pursuant to NRAP 8(a), a party must generally seek a stay in the District Court before moving for a stay in this Court. LVMPD satisfied this rule by first applying to the District Court for a stay. **Exhibits 4 and 10.** In determining whether to issue a stay of a judgment or order, NRAP 8(c) outlines four factors for this Court to consider: (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether appellant/petitioner is likely to prevail on the merits of the appeal. *Fritz Hansen A/S v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (holding that while no one factor is more important, "if one or two factors are especially strong, they may counterbalance other weak factors"). Notably, the "public interest" is not a factor for consideration under Nevada law, even though Respondents made this issue a focus of their District Court opposition. **Exhibit 10.**

2. Stay Pending Appeal to Preserve the Status Quo.

The purpose of a stay of a district court judgment pending appeal is to preserve, not change, the status quo. *U.S. v. State of Mich.*, 505 F.Supp. 467 (W.D. Mich. 1980). This Court has confirmed this recognized purpose of a stay:

The purpose of security for a stay pending appeal is to protect the judgment creditor's ability to collect the judgment if it is affirmed by preserving the status quo. . . .

Nelson v. Heer, 121 Nev. 832, 122 P.3d 1252, 1254 (2005) (collecting cases).

B. LVMPD SATISFIES NRAP 8(C) FACTORS PERMITTING THIS COURT TO ENTER A STAY PENDING APPEAL.

1. The Object of LVMPD's Appeal Will Be Defeated, and LVMPD Will Suffer Serious Injury if a Stay is Denied.

Very simply, if the status quo is not maintained, LVMPD will be undermining (at the very least), if not waiving, its entire argument on appeal without having the opportunity for this Court to review the merits of the District Court's decision. The purpose of LVMPD's appeal is two-fold. LVMPD is challenging both the March 2, 2018 Order requiring disclosure of the public records and the March 9, 2018 Order applying limitations on LVMPD's fees and requiring disclosure in an unreasonable time period. Without a stay, LVMPD will be faced with being held in contempt of court for not producing the public records in accordance with the District Court's Order, or foregoing its appeal rights and producing the records. The District Court improperly rejected LVMPD's motion for stay and determined that LVMPD created its own procedural emergency and that any irreparable harm was LVMPD's own doing. **Exhibit 4.** Furthermore, Respondents mistakenly contend that LVMPD's appeal solely concerns payment

for the extraordinary use of personnel. LVMPD, however, is appealing *both* District Court Orders and undoubtedly will suffer irreparable injury if it is forced to comply with the Orders and produce the records. While LVMPD does assert it should receive adequate compensation for extraordinary use of personnel prior to production, the irreparable injury is certainly the production of the records prior to this Court's decision because, if LVMPD prevails, it is without any remedy to have Respondents return the public records. As this Court has recently concluded, an attempt to prohibit the disclosure of public records in the media's possession is a prior restraint in violation of the First Amendment. *The Las Vegas Review Journal v. The Eighth Judicial Dist. Ct.*, 134 Nev. Adv. Op. 7 (2018).

In essence, LVMPD will be put in the precarious situation of appealing a judgment that will be impossible to retract if the records are produced, which would, in turn, result in a hollow appellate victory. To preserve the status quo, the Court should stay the District Court's previous Orders requiring disclosure of the records pending appeal.

2. Respondents Will Not Suffer Any Serious Injury if a Stay is Granted.

Notably, an appeal in and of itself does not constitute harm for purposes of entering a stay. *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 986-87. Maintaining the status quo and staying execution of the judgment will not harm Respondents in any way. In the District Court, Respondents relied on the public policy of the Nevada Public Records Act ("NPR") to demonstrate they will suffer harm. **Exhibit 11**, pp. 8-9. However, Respondents failed to articulate what harm or

injury they will suffer. It appears that Respondents want to utilize the judicial process in accordance with the NPRA while prohibiting LVMPD from using the same process to adjudicate its rights. If the District Court's Orders are not disturbed on appeal, LVMPD will produce the public records on remand. The District Court and Respondents have continued to point the finger at LVMPD for delaying this matter. In part, Respondents allege that LVMPD attempted delaying this matter by selecting a new judge. However, the Honorable Judge Richard Scotti issued a minute order requesting all parties to waive disqualification as a result of the Las Vegas Review Journal's publication ridiculing Judge Scotti. **Exhibit 11.** LVMPD chose not to waive its rights regarding disqualification. The reassignment was not LVMPD's doing, but a direct result of the opinion piece published by the Las Vegas Review Journal. Respondents also delayed this matter by taking almost an entire month to draft the initial order requiring the production of records. It is well established that an oral pronouncement of an order is not valid for enforcement, and only a written order may have any effect. *Rust v. Clark County School Dist.*, 103 Nev. 445, 747 P.2d 1380 (1987). Furthermore, LVMPD has not received a draft of the District Court's denial of the motion to stay. Clearly, there is no sense of urgency on behalf of the Respondents to have LVMPD comply with the District Court's decisions. As such, this factor also weighs in favor of LVMPD's requested stay relief.

3. LVMPD Is Likely to Prevail on the Merits of this Appeal.

In explaining the fourth factor of NRAP 8(c), dealing with the likelihood of success on appeal, this Court has clarified that "a movant does not always have to

show a probability of success on the merits, [but] the movant must ‘present a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.’” *Fritz Hansen A/S*, 116 Nev. at 658, 6 P.3d at 987 (citing *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)). There are two significant legal issues that will be addressed in LVMPD’s appeal: (1) whether LVMPD’s interest in its investigative techniques, tactics and procedures outweigh the public’s interest in disclosure; and (2) if LVMPD is nonetheless required to produce records, is LVMPD permitted to charge for staff time for the production of public records involving extraordinary use of personnel.

This Court has not substantively addressed whether the government’s interest in its investigative techniques substantially outweighs the public’s interest in disclosure of public records. In applying the balancing test, the *Donrey* Court recognized that certain policy considerations may warrant non-disclosure, including the protection of investigative techniques. 106 Nev. at 635-36, 798 P.2d at 148. Furthermore, FOIA, which this Court has relied on in multiple instances, recognizes an exemption for investigative techniques and procedures in relation to law enforcement records. With respect to Body Worn Camera footage, Nevada law requires inspection if the information contained on the videos are confidential. NRS 289.830. As a matter of first impression in Nevada, these issues present serious legal questions that weigh in favor of a stay until the matter is resolved on appeal.

Likewise, the issue of whether a governmental entity may charge for staff time in producing public records that utilize the extraordinary use of personnel is an issue of first impression in Nevada. It is LVMPD's position that NRS 239.055 is ambiguous, but the legislative history clearly indicates that payment for staff time was always contemplated. **Exhibit 7.** The fee issue also presents a serious legal question that warrants a stay until a decision is issued by this Court. Therefore, LVMPD satisfies the final NRAP 8(c) element to present a "serious legal question," and this Court should grant LVMPD's requested stay relief pending appeal.

IV. CONCLUSION

In summary, LVMPD respectfully requests that this Court stay the District Court's March 2nd and March 9th Orders pending the resolution of this appeal, without the requirement of a bond. LVMPD urges this Court to enter a stay pending appeal of District Court's Orders prior to the May 2, 2018 expiration of the NRCP 62(a) automatic stay.

Dated this 20th day of April, 2018.

MARQUIS AURBACH COFFING

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NRAP 27(e) CERTIFICATE

I hereby certify that this Emergency Motion for Relief Under NRAP 27(e) relies upon issues raised by LVMPD in the District Court, and otherwise complies with the provisions of NRAP 27(e).

As set forth in the body of this motion, emergency relief is needed on or before **May 2, 2018** because the automatic stay under NRCP 62(a) for the District Court's order dissolving the previously issued stay expires on May 2, 2018. The telephone numbers and office addresses of the attorneys for the parties are as follows:

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Company; Scripps Broadcasting Holdings LLC d/b/a KTNV-TV; and WP Company
LLC d/b/a The Washington Post*

According to the attached certificate of service, all parties through their counsel of record have been served electronically through this Court's electronic filing system, and by email as indicated. Furthermore, the undersigned notified the parties by email on April 20, 2018 of the emergency motion and the basis for the same. The undersigned's office also informed the Clerk of the emergency motion on the same day.

Dated this 20th day of April, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **EMERGENCY MOTION FOR RELIEF UNDER NRAP 27(e)** was filed electronically with the Nevada Supreme Court on the 20th day of April, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Justin Shiroff, Esq.
Joel Tasca, Esq.
Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.

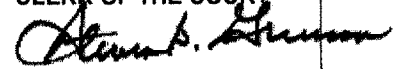
I further certify that I served a copy of this document by emailing a true and correct copy thereof due to the exigent nature of this matter addressed to:

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EXHIBIT 1



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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 American Broadcasting Companies, Inc.; The
12 Associated Press; Cable News Network, Inc.;
13 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
14 Angeles Times Communications, LLC; The New
15 York Times Company; and WP Company LLC
16 d/b/a The Washington Post,

15 Petitioners,

16 vs.

17 Las Vegas Metropolitan Police Department,

18 Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

19 **NOTICE OF ENTRY OF ORDER**

20 TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

21 ...

22 ...

23 ...

24 ...

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26 ...

27 ...

28 ...

1 PLEASE TAKE NOTICE that an Order Granting Amended Public Records Act
2 Applications Pursuant to Nev. Rev. Stat. § 239.011/Petition for Writ of Mandamus was entered
3 on the 2nd day of March, 2018, a copy of which is attached hereto.

4 Dated this 2nd day of March, 2018.

5
6 MARQUIS AURBACH COFFING

7
8 By: /s/ Jackie V. Nichols
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CERTIFICATE OF SERVICE

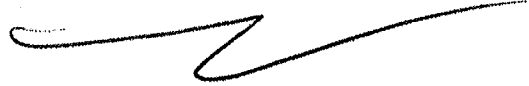
I hereby certify that the foregoing **NOTICE OF ENTRY OF ORDER** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 2nd day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).



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DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
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Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; and WP Company LLC
d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W

A-17-764169-W

Dept. No.: 2

**ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS
PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

This matter came before the Court on Petitioners American Broadcasting Companies, Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 "Petitioners") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the "Petitions").

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal's Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition's Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department ("Metro"). Based on the Court's careful review of
15 the parties' briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the "Act") is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention -- that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones -- as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

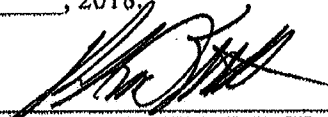
27 ...

28 ...

1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

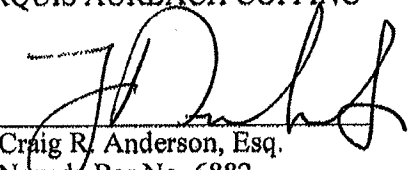
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
DISTRICT COURT JUDGE

8 Respectfully Submitted By:
9 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

14 Nevada Bar No. 6882

15 Nick D. Crosby, Esq.

16 Nevada Bar No. 8996

17 Jackie V. Nichols, Esq.

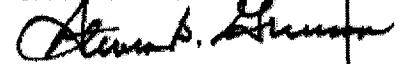
18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department
22
23
24
25
26
27
28

EXHIBIT 2



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **AMERICAN BROADCASTING COMPANIES,**
7 **INC., et al.,**

8 **Plaintiffs,**

9 **vs.**

10 **LAS VEGAS METROPOLITAN POLICE**
11 **DEPARTMENT, et al.,**

12 **Defendants.**

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 **II. PURPOSE OF THE PUBLIC RECORDS ACT**

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*. 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature hereby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to "ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities." *DR Partners v. Board of County*
4 *Com'rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) ("The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed."). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) ("[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.").

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media's efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES' DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media's request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 . . .

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND**
13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRS 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the "COPY COSTS" if the
3 project required the government entity to incur "extraordinary" use of personnel and
4 technological resources. It says: "[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use." The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its "COPY COSTS," plus its "PRE-COPY PREPARATIONS," not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media's request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the "50 cent" rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners' request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners' request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners'
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners' request might interfere with Metro's ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media's request will
19 involve "extraordinary use," and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur "extraordinary use" of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic "COPY COSTS" are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media's
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro's
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. “GEOGRAPHIC INFORMATION SERVICES” RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the “pre-copy
4 preparations.” This exception applies to data that is part of a “geographic information
5 systems.” A “geographic information system” is “a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed.” Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. “FEE FOR PROVIDING” RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a “per page” basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 **VII. SUMMARY OF FEES ALLOWED**

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

9 **Evidence Logs, and Interview Reports:** COPY COSTS of 31 cents per page, plus an
10 additional 50 cents for extraordinary services, for a total of 81 cents.

11 **Body Cams, and 911 Calls:** COPY COSTS – meaning only the actual
12 costs to reproduce the records onto the medium for transfer, and the cost of such
13 medium (such as DVD, CD, flash drive, hard drive, etc.).

14 **Dispatch Logs:** PRE-COPY PREPARATIONS, meaning
15 actual cost to gather, discuss, supervise and insure quality control, as part of the effort to
16 comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 ...

26 ...

27 ...

28

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6
7 
8 RICHARD F. SCOTTI
DISTRICT COURT JUDGE

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

15 Joel E. Tasca, Esq.
16 Justin A. Shiroff, Esq.
BALLARD SPAHR
17 *Counsel for Petitioner*

18 Margaret A. McLetchie, Esq.
19 Aline M. Shell, Esq.
MCLECHIE SHELL LLC
Counsel for Petitioner LVRJ

20 Craig R. Anderson, Esq.
21 Nick D. Crosby, Esq.
22 Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
Counsel for Respondent LVMPD

23
24 /s/ Melody Howard

25 _____
26 Melody Howard
27 Judicial Executive Assistant
28

Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

EXHIBIT 3

Original

Electronically Filed
4/3/2018 1:30 PM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 Marquis Aurbach Coffing
2 Craig R. Anderson, Esq.
3 Nevada Bar No. 6882
4 Nick D. Crosby, Esq.
5 Nevada Bar No. 8996
6 Jackie V. Nichols, Esq.
7 Nevada Bar No. 14246
8 10001 Park Run Drive
9 Las Vegas, Nevada 89145
10 Telephone: (702) 382-0711
11 Facsimile: (702) 382-5816
12 canderson@maclaw.com
13 ncrosby@maclaw.com
14 jnichols@maclaw.com
15 Attorneys for Respondent Las Vegas
16 Metropolitan Police Department

DISTRICT COURT
CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; Scripps Broadcasting
Holdings LLC d/b/a KTNV-TV; and WP
Company LLC d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W.

A-17-764169-W

Dept. No.: 23

DEPARTMENT XXIII
NOTICE OF HEARING
DATE 4/10/18 TIME 9:30am
APPROVED BY ca/dez

**LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR STAY
PENDING RESOLUTION ON APPEAL ON AN ORDER SHORTENING TIME**

Las Vegas Metropolitan Police Department (the "Department" or "LVMPD"), by and
through its attorney of record, Marquis Aurbach Coffing, hereby files its Motion for Stay
Pending Resolution on Appeal on an Order Shortening Time.

...

...

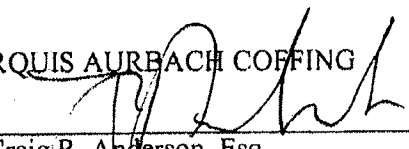
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...

1 This Motion is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, and any oral argument allowed by the Court at a hearing
3 on this matter.

4 Dated this 29th day of March, 2018.

5 MARQUIS AURBACH COFFING

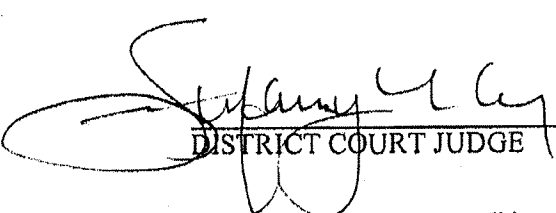
6 By: 

Craig R. Anderson, Esq.
Nevada Bar No. 6882
Nick D. Crosby, Esq.
Nevada Bar No. 8996
Jackie V. Nichols, Esq.
Nevada Bar No. 14246
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Respondent Las Vegas
Metropolitan Police Department

12 **ORDER SHORTENING TIME**

13 Upon the Declaration of Jackie Nichols, Esq., and good cause appearing therefore,

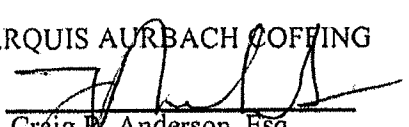
14 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the time for hearing of
15 the above-entitled matter will be shortened and will be heard on the 10th day of
16 April, 2018, at the hour of 9:30 a.m. in Department 23 of the Eighth
17 Judicial District Court, located at the Regional Justice Center, 200 Lewis Avenue, Las Vegas,
18 Nevada 89155.

19 
20 DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

21 Respectfully Submitted by:

22 MARQUIS AURBACH COFFING

23 By: 

24 Craig R. Anderson, Esq.
Nevada Bar No. 6882
25 Nick D. Crosby, Esq.
Nevada Bar No. 8996
26 Jackie V. Nichols, Esq.
Nevada Bar No. 14246
27 10001 Park Run Drive
Las Vegas, Nevada 89145
28 Attorneys for Respondent Las Vegas Metropolitan Police Department

DECLARATION OF JACKIE NICHOLS, ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

Jackie Nichols, Esq. declares as follows:

1. I am duly licensed to practice law in the State of Nevada and am currently employed with Marquis Aurbach Coffing. I have personal knowledge of the facts stated herein, except those facts stated upon information and belief, and as to those, I believe them to be true. I am competent to testify as to the facts stated herein in a court of law.

2. I represent the Respondent Las Vegas Metropolitan Police Department ("LVMPD") in the above-captioned matter, and I submit this declaration on behalf of LVMPD in support of its Motion for Stay Pending Resolution on Appeal on an Order Shortening Time.

3. This matter concerns Petitioners' Petitions for Writ of Mandamus pursuant to the Nevada Public Records Act ("NPRA").

4. On March 2, 2018, an order granting Petitioners' Amended Public Records Act Applications was filed. The order was noticed on the same day. The order, in part, required LVMPD to produce the public records on a rolling basis. *See* Order filed on March 2, 2018 on file herein.

5. On March 7, 2018, the Court entertained oral arguments by all parties on the underlying fee issues previously submitted to the Court through supplemental briefing. *See* Court Minutes dated March 7, 2018 on file herein.

6. On March 9, 2018, the Court's decision and order on the fee provisions was filed. The fee order, in part, requires LVMPD to begin producing documents within three business days from the entry of the order, as well as provide an estimate to Petitioners consistent with the costs permitted to be charged as determined the Court. *See* Order filed on March 9, 2018 on file herein.

7. On March 22, 2018, this Court held a status check to address the briefing schedule related to LVMPD's Motion for Reconsideration and for Stay. At the hearing, the Court entered a stay of the previous orders until April 27, 2018, at which time a decision on LVMPD's Motion for Reconsideration will be issued.

1 8. LVMPD now seeks to forego its Motion for Reconsideration and move forward
2 with an appeal to the Nevada Supreme Court.

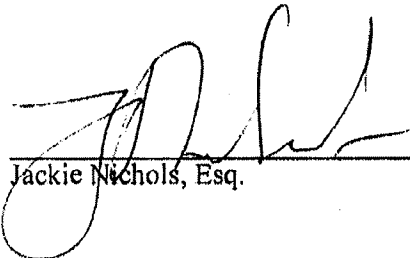
3 9. Through this emergency motion for stay, LVMPD seeks a stay pending resolution
4 of the appeal to the Nevada Supreme Court.

5 10. If this emergency motion were set in ordinary course, LVMPD would not be able
6 to request the relief it seeks due to the expiration of the temporary stay issued by this Court.

7 11. LVMPD requests the Court set this motion for stay on the next available hearing
8 date prior to the expiration of the current temporary stay, set to expire April 27, 2018.

9 Pursuant to NRS § 53.045, I declare under penalty of perjury under the laws of the State
10 of Nevada that the foregoing is true and correct.

11 Dated this 29th day of March, 2018.

12 
13 Jackie Nichols, Esq.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 **I. INTRODUCTION**

16 LVMPD requests the Court to enter a stay in relation to the March 2, 2018 and March 9,
17 2018 orders entered in this matter. The Court's orders require LVMPD to begin production of
18 the documents immediately without first receiving proper payment. Production of any
19 documents, however, will waive LVMPD's arguments on appeal. Upon LVMPD's request, this
20 Court entered a stay until April 27, 2018, pending the decision on its motion for reconsideration.
21 LVMPD seeks to forego its previously filed motion for reconsideration and move forward with
22 an appeal to the Nevada Supreme Court. Thus, LVMPD requests the Court stay enforcement of
23 both orders pending resolution on appeal.
24

A. PROCEDURAL HISTORY.

On November 28, 2017, LVRJ amended its Petition. Likewise, on December 6, 2017, the Coalition amended its Petition to include Scripps Broadcasting Holdings, LLC d/b/a KTNV-NV ("KTNV") (collectively included with the Coalition and Petitioners). On December 11, 2017, the parties entered into a stipulation and order regarding the briefing schedule and February 7, 2018 hearing.

On February 7, 2018 the Court entertained oral arguments on the briefing previously submitted regarding Petitioners' Amended Petitions requesting various documents from LVMPD related to the 1 October Massacre. Summarily, the Court ordered the disclosure of: 911 calls; body camera data; dash cam data; CCTV videos; evidence logs; dispatch information; interview reports; search warrant returns; affidavits of probable cause; purchase orders and no-bid contracts; and any information on any weapons obtained during the investigation into the 1 October Massacre on a rolling basis. *Id.*

1 **C. MARCH 9, 2018 ORDER.**

2 A status check regarding the production of the documents was set for March 7, 2018.
3 The Court heard additional arguments regarding the fee issues previously briefed. After taking
4 the matter under advisement, the Court issued its order on March 9, 2018. *See* Order filed on
5 March 9, 2018 on file herein (the "March 9th Order"). The March 9th Order required LVMPD
6 to being production of documents within three business days of entry of the order, as well as
7 requiring LVMPD to provide Petitioners with an estimate of costs based on the Court's ruling
8 limiting fees.

9 **D. THE STATUS CHECK HEARING.**

10 On March 16, 2018, LMVPD filed its Motion for Reconsideration and Stay Pending
11 Reconsideration. *See* Motion for Reconsideration and Stay Pending Reconsideration filed on
12 March 16, 2018 on file herein. As result of the Honorable Judge Scotti's recusal, LVMPD
13 submitted a request to this Court to have the motion heard on order shortening time. Rather than
14 signing the order shortening time, this Court held a status check on March 22, 2018 to discuss
15 the briefing schedule to LVMPD's motion. In addition to the briefing schedule, the Court
16 entered a stay of the orders until April 27, 2018.

17 **III. LEGAL ARGUMENT**

18 In granting stay relief, this Court should consider the NRAP 8(c) factors, as favoring
19 LVMPD's entitlement to a stay, and to preserve the status quo: (1) Whether the object of the
20 appeal or writ petition will be defeated if the stay or injunction is denied; (2) Whether
21 appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied;
22 (3) Whether the respondent/real party in interest will suffer irreparable or serious injury if the
23 stay or injunction is granted; and (4) Whether appellant/petitioner is likely to prevail on the
24 merits of the appeal. *See Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *see*
25 *also Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (holding that
26 while no one factor is more important, "if one or two factors are especially strong, they may
27 counterbalance other weak factors").
28

1 In reviewing these factors, the Supreme Court has recognized that the purpose of a stay is
2 to preserve the status quo, which in this case means that production of public records should be
3 stayed pending resolution of LVMPD's appeal to the Nevada Supreme Court. *See Nelson v.*
4 *Heer*, 121 Nev. 832, 835, 122 P.3d 1252, 1254 (2005); *see also U.S. v. State of Mich.*, 505
5 F.Supp. 467, 471 (W.D. Mich. 1980) (stating that the purpose of a stay is to preserve, not
6 change, the status quo). Therefore, this Court should consider the NRAP 8(c) factors and enter
7 the requested stay.

8 **A. THE OBJECT OF LVMPD'S MOTION FOR RECONSIDERATION WILL**
9 **BE DEFEATED AND LVMPD WILL SUFFER SERIOUS INJURY IF A**
10 **STAY IS DENIED.**

11 Very simply, if the status quo is not maintained, LVMPD will be compelled to begin
12 production of the public records no later than April 27, 2018 without appropriate payment for the
13 extraordinary use of its personnel. The purpose of LVMPD's appeal is two-fold. First, LVMPD
14 is appealing the Court's March 2nd Order regarding the disclosure of the public records.
15 LVMPD is also appealing Court's March 9th Order applying limitations on LVMPD's fees and
16 requiring disclosure in an unreasonable time period.

17 If the Court were to deny the stay, LVMPD would suffer serious injury because
18 compliance with the Court's order would waive and undermine the arguments made on appeal.
19 Furthermore, once the information is produced, it is impossible to retract that information or
20 even prevent Petitioners from disseminating the information. Therefore, the Court should find
21 that LVMPD satisfies the first two NRAP 8(c) factors for entering a stay pending the resolution
22 of LVMPD's appeal.

23 **B. PETITIONERS WILL NOT SUFFER ANY SERIOUS OR IRREPARABLE**
24 **INJURY IF A STAY IS GRANTED.**

25 LVMPD's act of seeking stay relief does not in and of itself constitute harm to the non-
26 moving party for purposes of entering a stay. *See Hansen*, 116 Nev. at 658, 6 P.3d at 986-987.
27 Furthermore, Petitioners will not suffer any harm because LVMPD would not be able to
28 immediately produce the documents at the expiration of the temporary stay given the necessity to
first gather all the data and transfer it to a separate server before commencing review of the

1 information. Therefore, the Court should similarly conclude that LVMPD has satisfied the third
2 NRAP 8(c) factor for granting a stay pending resolution of the appeal.

3 **C. LVMPD IS LIKELY TO PREVAIL ON THE MERITS OF ITS APPEAL.**

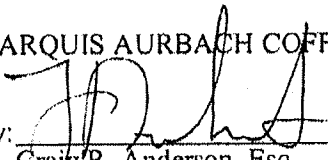
4 In weighing this final factor, the Supreme Court has articulated that "a movant does not
5 always have to show a probability of success on the merits, [but] the movant must 'present a
6 substantial case on the merits when a serious legal question is involved and show that the balance
7 of equities weighs heavily in favor of granting the stay.'" *Hansen*, 116 Nev. at 659, 6 P.3d at
8 987. LVMPD presents, at least, serious legal questions to satisfy this final factor for entering a
9 stay pending the Court's order. There are two significant legal issues that will be addressed in
10 LVMPD's appeal: (1) Whether LVMPD's interest in non-disclosure outweighs the public's
11 interest in disclosure; and (2) If LVMPD is nonetheless required to produce the public records,
12 what is the appropriate fee it may charge for production. These issues involve unsettled and
13 contentious areas of the NPRA. Therefore, the Court should determine that LVMPD has at least
14 presented serious legal questions to satisfy the fourth NRAP 8(c) factor for entering a stay. This
15 factor, in combination with the other three factors demonstrates the necessity of the stay.

16 **IV. CONCLUSION**

17 Based on the foregoing, LVMPD respectfully requests the Court grants its Motion for
18 Stay Pending Resolution on Appeal on an Order Shortening Time.

19 Dated this 29th day of March, 2018.

20 MARQUIS AURBACH COFFING

21 By: 

22 Craig R. Anderson, Esq.
23 Nevada Bar No. 6882
24 Nick D. Crosby, Esq.
25 Nevada Bar No. 8996
26 Jackie V. Nichols, Esq.
27 Nevada Bar No. 14246
28 10001 Park Run Drive
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Attorneys for Respondent Las Vegas
Metropolitan Police Department

MARQUIS AURBACH COFFING
10001 Park Run Drive
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CERTIFICATE OF SERVICE

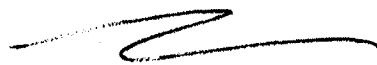
I hereby certify that the foregoing **LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR RECONSIDERATION AND STAY PENDING RECONSIDERATION ON AN ORDER SHORTENING TIME** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 3rd day of April, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

Joel E. Tasca, Esq.
Justin A. Shiroff, Esq.
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1980 Festival Plaza Drive, Suite 900
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shriroffj@ballardspahr.com
tasca@ballardspahr.com
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Attorneys for Petitioners

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
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701 East Bridger Avenue, Suite 520
Las Vegas, Nevada 89101
maggie@nvlitigation.com
alina@nvlitigation.com
Attorneys for Petitioner Las Vegas Review-Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT 4

Skip to Main Content Logout My Account Search Menu New District Civil/Criminal Search Refine Search Close

Location : District Court Civil/Criminal Help

REGISTER OF ACTIONS

CASE No. A-17-764030-W

American Broadcasting Companies, Inc., Plaintiff(s) vs. Las Vegas Metropolitan Police Department, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Writ of Mandamus**

Date Filed: **11/02/2017**

Location: **Department 23**

Cross-Reference Case Number: **A764030**

Supreme Court No.: **75518**

RELATED CASE INFORMATION

Related Cases

A-17-764169-W (Consolidated)

PARTY INFORMATION

Defendant	Las Vegas Metropolitan Police Department	Lead Attorneys Craig R. Anderson <i>Retained</i> 702-382-0711(W)
Petitioner	Associated Press	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Petitioner	Cable News Network, Inc.	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Petitioner	Chesapeake Media I, LLC <i>Doing Business As</i> KSNV-TV	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Petitioner	Las Vegas Review-Journal	Margaret A. McLetchie <i>Retained</i> 702-728-5300(W)
Petitioner	Los Angeles Times Communications, LLC	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Petitioner	New York Times Company	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Petitioner	WP Company LLC <i>Doing Business As</i> Washington Post	Joel E. Tasca <i>Retained</i> 702-471-7000(W)
Plaintiff	American Broadcasting Companies, Inc.	Joel E. Tasca <i>Retained</i> 702-471-7000(W)

EVENTS & ORDERS OF THE COURT

04/10/2018 **Motion For Stay** (9:30 AM) (Judicial Officer Miley, Stefany)
Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time

Minutes

04/10/2018 9:30 AM

- Court noted nothing had been resolved. Argument by Ms. Nichols regarding production of documents, believed the Department would be left no remedy and stated once released to parties, they will not be prohibited from disseminating them. Counsel then referred to the 5 day rule and argued Public Records Act. Argument by Ms. McLetchie

pointing out Defendant was to supplement their Motion for Reconsideration, noted there is a stay in place until April 27, 2018 for further briefing and stated this case is different from the coroner case. Court noted the Supreme Court had been swift in their decision in Judge Scotti's case. Ms. McLetchie stated they did not want a stay in this case and noted Defendant move for a stay with the Supreme Court and believed Defendant had never overcome the presumption. Further argument by Ms. Nichols. Argument by Mr. Shiroff. Additional argument by Ms. Nichols. Court countered by stating Judge had issue an Order to release records and believed Defendant had created it's own urgency. Disagreement by Ms. Nichols, stated they had moved swiftly and noted they had 30 days in which to file an Appeal. Court stated there appeared to be a lot of game playing, pointed out Defendant had ignored Judge Scotti's order, clarified delay was by Department not the Courts and believed party was prolonging the proceedings. Court advised it understood party had their rights, however, demanded to know what had changed. Argument by Ms. Nichols. Court agreed party had the right to either an Appeal or a reconsideration with Department chose reconsideration, noted Department now wants to change course and again inquired of what had changed. Ms. Nichols advised they had filed motion 10 days after first order. Statement by the Court noting the shooting had occurred several months prior. Argument by Ms. Nichols stating there is an ongoing investigation, then a search warrant and then noted a name had been leaked of someone being investigated. Court stated its frustrations as there have been no substantive rulings by this Court as of yet, believed there to be no substance as to the objections and advised it is needing further information. Additional argument by Ms. Nichols regarding the Freedom Protection Act, which is not found similar to Nevada Public Act. Court agreed it did allow for some privileges. Argument by Ms. McLetchie stating Defendant had not met burden for the stay. COURT ORDERED, motion DENIED. Court reiterated the urgency was created by Defendant. FURTHER, costs will be held in abeyance. ADDITIONALLY, Motion for Reconsideration is DENIED WITH PREJUDICE and any future dates are VACATED. Upon Ms. McLetchie's inquiry, Court advised previous stay until April 27, 2018 is MOOT. Mr. Shiroff to prepare the Order and provide to opposing counsel for review prior to submitting to the Court for signature.

Parties Present

Return to Register of Actions

EXHIBIT 5



1 **NOEJ**

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13 Email: maggie@nvlitigation.com
Email: alina@nvlitigation.com

14 *Attorneys for Las Vegas Review-Journal*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 American Broadcasting Companies, Inc.; The
19 Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
20 Angeles Times Communications, LLC; The New
York Times Company; Scripps Broadcasting
21 Holdings, LLC d/b/a KTNV-TV; and WP
Company LLC d/b/a The Washington Post

22 Petitioners,

23 v.

24 Las Vegas Metropolitan Police Department,

25 Respondent.
26
27

CASE NO. A-17-764030-W
Consolidated Case No.: A-17-764169-W

DEPT. XXIII

**NOTICE OF ENTRY OF ORDER
DENYING LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S MOTION FOR
RECONSIDERATION AND FOR STAY
PENDING RECONSIDERATION**

1 PLEASE TAKE NOTICE that on the 18th day of April, 2018, the Clerk of the Court
2 entered an Order Denying Las Vegas Metropolitan Police Department's Motion for
3 Reconsideration and for Stay Pending Reconsideration in the above-referenced matter.

4 A copy of said Order is attached hereto as Exhibit 1.

5 BALLARD SPAHR LLP

6 By: /s/ Justin A Shiroff

7 Joel E. Tasca, Esq.

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9 Justin A. Shiroff, Esq.

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12 Las Vegas, NV 89135

13 *Attorneys for Petitioners*

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23 Email: maggie@nvlitigation.com

24 Email: alina@nvlitigation.com

25 *Attorneys for Las Vegas Review-Journal*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5, I hereby certify that on the 18th day of April, 2018, a true and correct copy of the ***NOTICE OF ENTRY OF ORDER DENYING LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR RECONSIDERATION AND FOR STAY PENDING RECONSIDERATION*** was filed and served on the following counsel of record via the Court's electronic service system:

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Las Vegas, NV 89101

Attorneys for Las Vegas Review-Journal

Craig R. Anderson
Nick D. Crosby
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Marguis Aurbach Coffing
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Attorneys for Las Vegas Metropolitan Police Department

/s/ Sarah Walton
An Employee of Ballard Spahr LLP

EXHIBIT 1

EXHIBIT 1



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14 *Attorneys for Las Vegas Review-Journal*

15
16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**
18

19 American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
20 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
21 York Times Company; Scripps Broadcasting
Holdings, LLC d/b/a KTNV-TV; and WP
22 Company LLC d/b/a The Washington Post

23 Petitioners,
24 v.

25 Las Vegas Metropolitan Police Department,

26 Respondent.
27
28

CASE NO. A-17-764030-W
Consolidated Case No.: A-17-764169-W

DEPT. XXIII

**ORDER DENYING LAS VEGAS
METROPOLITAN POLICE
DEPARTMENT'S MOTION FOR
RECONSIDERATION AND FOR STAY
PENDING RECONSIDERATION**

1 LAS VEGAS REVIEW-JOURNAL,

2 Petitioner.

3 v.

4 LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

5 Respondent.
6

7 This matter came before the Court on Las Vegas Metropolitan Police Department's
8 ("Metro") March 16, 2018 Motion for Reconsideration and Stay Pending Reconsideration (the
9 "Motion"). On April 4, 2018, Petitioners American Broadcasting Companies, Inc. ("ABC"), the
10 Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a
11 KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("*Los Angeles Times*"),
12 The New York Times Company ("*The New York Times*"), Scripps Broadcasting Holdings, LLC
13 d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post
14 ("*Washington Post*"); and the Las Vegas Review-Journal ("LVRJ", and collectively,
15 "Petitioners"), filed their Joint Opposition to Motion for Reconsideration and Stay Pending
16 Reconsideration. At the April 10, 2018 hearing on Metro's separate Motion for Stay Pending
17 Appeal on Order Shortening Time, the Court advanced its ruling on the Motion to the same date.
18 Upon reviewing the briefs as filed and arguments by counsel, the Court hereby rules as follows:
19
20
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25
26
27
28

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1 IT IS SO ORDERED that the Motion for Reconsideration and Stay Pending
2 Reconsideration is hereby DENIED without prejudice.

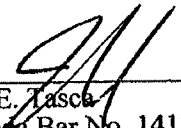
3 IT IS FURTHER ORDERED that the temporary stay entered by this Court on March 22,
4 2018 is hereby dissolved.

5 IT IS SO ORDERED.

6 DATED this ____ day of April, 2018.

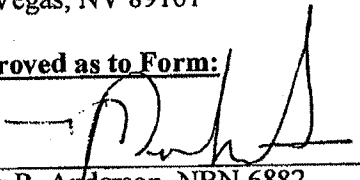
7
8 DISTRICT COURT JUDGE
9 

10 **Prepared and submitted by:**

11
12 By: 
13 Joel E. Lasca
14 Nevada Bar No. 14124
15 Justin A. Shiroff
16 Nevada Bar No. 12869
17 1980 Festival Plaza Drive, Suite 900
18 Las Vegas, Nevada 89135-2958

16 By: _____
17 Margaret A. McLetchie
18 Nevada Bar No. 10931
19 Alina M. Shell
20 Nevada Bar No. 11711
21 701 E. Bridger Ave., Suite 520
22 Las Vegas, NV 89101

20 **Approved as to Form:**

21 
22 By: _____
23 Craig R. Anderson, NBN 6882
24 Nick D. Crosby, NBN 8996
25 Jackie V. Nichols, NBN 14246
26 10001 Park Run Drive
27 Las Vegas, NV 89145
28

1 IT IS SO ORDERED that the Motion for Reconsideration and Stay Pending
2 Reconsideration is hereby DENIED without prejudice.

3 IT IS FURTHER ORDERED that the temporary stay entered by this Court on March 22,
4 2018 is hereby dissolved.

5 IT IS SO ORDERED.

6 DATED this 17th day of April, 2018.

7 
8 DISTRICT COURT JUDGE

9 JUDGE STEFANY A. MILEY

10 **Prepared and submitted by:**

11 By: _____
12 Joel E. Tasca
13 Nevada Bar No. 14124
14 Justin A. Shiroff
15 Nevada Bar No. 12869
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17 Las Vegas, Nevada 89135-2958

18 By:  _____
19 Margaret A. McLetchie
20 Nevada Bar No. 10931
21 Alina M. Shell
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25 **Approved as to Form:**

26 By: _____
27 Craig R. Anderson, NBN 6882
28 Nick D. Crosby, NBN 8996
Jackie V. Nichols, NBN 14246
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Las Vegas, NV 89145

EXHIBIT 6

CASE No. A-17-764030-W

www.ck12.org

Case Type: **Writ of Mandamus**

Related Cases

PARTY INFORMATION

EVENTS & ORDERS OF THE COURT

11/02/2017	Petition for Writ of Mandamus <i>Public Records Act Application Pursuant to Nev. Rev. Stat. Sec.239.011/Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. Sec.239.011</i>
11/02/2017	Initial Appearance Fee Disclosure <i>Initial Appearance Fee Disclosure</i>
11/07/2017	Motion to Consolidate <i>Motion to Consolidate</i>
11/08/2017	Peremptory Challenge <i>Peremptory Challenge of Judge</i>
11/08/2017	Notice of Department Reassignment <i>Notice of Department Reassignment</i>
11/08/2017	Amended Certificate of Service

11/15/2017 **Amended Certificate of Service**
Summons Electronically Issued - Service Pending
Summons

11/28/2017 **Amended Petition**
Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.011/Petition for Writ of Mandamus

11/28/2017 **Notice of Entry of Order**
Notice of Entry of Order

12/01/2017 **Summons**
Summons

12/06/2017 **Amended Petition**
Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

12/07/2017 **Stipulation and Order**
Stipulation and order to (1) Amend Petition; and (2) to Set Briefing Schedule

12/08/2017 **Petitioners Opening Brief**
Opening Brief in Support of Amended Public Records Act Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus

12/11/2017 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to (1) Amend Petition; and (2) To Set Briefing Schedule

12/13/2017 **Motion to Consolidate** (3:00 AM) (Judicial Officer Scotti, Richard F.)
Petitioner Las Vegas Review-Journal's Motion to Consolidate
Minutes
12/12/2017 Reset by Court to 12/13/2017
Result: Minute Order - No Hearing Held

12/14/2017 **Media Request and Order**
Media Request And Order Allowing Camera Access To Court Proceedings

12/15/2017 **Joinder**
Joinder to Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.001/Petition for Writ of Mandamus

12/18/2017 **Stipulation and Order**
Stipulation and Order to Extend Set Briefing Schedule

12/20/2017 **Notice of Change of Address**
Notice of Change of Address

12/22/2017 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order to Extend Set Briefing Schedule

12/27/2017 **Minute Order** (11:21 AM) (Judicial Officer Scotti, Richard F.)
Minute Order Granting Petitioner Las Vegas Review-Journal's Motion to Consolidate
Minutes
Result: Minute Order - No Hearing Held

12/28/2017 **Notice of Hearing**
Notice of Hearing

01/08/2018 **Opposition**
Respondent Las Vegas Metropolitan Police Department s Opposition to Petitioner Las Vegas Review Journal s Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001 / Petition for Writ of Mandamus (Expedited Matter Pursuant to Nev. Rev. Stat. 239.001)

01/11/2018 **Order Granting Motion**
Order Granting Motion to Consolidate with Case No. A-17-764169-W

01/11/2018 **Notice of Entry of Order**
Notice of Entry of Order Granting Motion to Consolidate with Case No. A-17-764169-W

01/16/2018 **Opposition**
Respondent Las Vegas Metropolitan Police Department s Opposition to Petitioner Las Vegas Review Journal s Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001 / Petition for Writ of Mandamus (Expedited Matter Pursuant to Nev. Rev. Stat. 239.001)

01/22/2018 **Reply**
Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

01/22/2018 **Exhibits**
Appendix of Exhibits to Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to its Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/ Petition for Writ of Mandamus - Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

01/23/2018 **Exhibits**
Exhibit 11 to Las Vegas Review-Journal's Reply to Respondent Las Vegas Metropolitan Police Department's Opposition to It's Public Records Act Application Pursuant to Nev. Rev. Stat. 239.001/Petition for Writ of Mandamus Expedited Matter Pursuant to Nev. Rev. Stat. 239.011

01/31/2018 **Reply in Support**
Reply in Further Support of Joinder to Opening Brief in Support of Amended Public Records Act Application Pursuant to Nev. Rev. Stat. Sec. 239.001/Petition for Writ of Mandamus

02/07/2018 **Hearing** (9:00 AM) (Judicial Officer Scotti, Richard F.)
Amended Petition
Parties Present
Minutes
01/24/2018 Reset by Court to 02/07/2018
Result: Granted

02/07/2018 **CANCELED Hearing** (3:00 AM) (Judicial Officer Scotti, Richard F.)
Vacated - Duplicate Entry
01/29/2018 Reset by Court to 02/07/2018

02/13/2018 **Media Request and Order**
Media Request And Order Allowing Camera Access To Court Proceedings

02/13/2018 **Recorders Transcript of Hearing**
Recorders Transcript of Hearing Re: Amended Petition

02/14/2018 **Supplement**
Supplemental Brief Regarding Costs

02/14/2018 **Brief**
Las Vegas Metropolitan Police Department's Brief Regarding Fees Permitted to be Charged in Responding to Public Records Requests

02/15/2018 **Joinder**

03/02/2018 *Joinder to Supplemental Brief Regarding Costs*
Order Granting
Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat. 239.011/Petition for Writ of Mandamus

03/02/2018 **Notice of Entry of Order**
Notice of Entry of Order

03/07/2018 **Status Check** (9:00 AM) (Judicial Officer Scotti, Richard F.)
03/07/2018, 05/08/2018
Status Check: Documents Provided
Parties Present
Minutes
03/21/2018 Reset by Court to 05/08/2018
Result: Matter Continued

03/09/2018 **Order**
Order

03/12/2018 **Minute Order** (3:00 AM) (Judicial Officer Scotti, Richard F.)
Minutes
Result: Minute Order - No Hearing Held

03/16/2018 **Notice**
Notice Regarding Disqualification

03/16/2018 **Notice**
Notice Concerning Court's March 12, 2018 Minute Order

03/16/2018 **Minute Order** (3:00 AM) (Judicial Officer Scotti, Richard F.)
Minutes
Result: Minute Order - No Hearing Held

03/16/2018 **Motion to Reconsider**
Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration

03/19/2018 **Notice of Department Reassignment**
Notice of Department Reassignment

03/20/2018 **Notice of Hearing**
Notice of Hearing

03/22/2018 **Status Check** (9:30 AM) (Judicial Officer Miley, Stefany)
Status Check Re: Briefing Schedule of LVMPD Motion for Reconsideration and Request for Stay
Parties Present
Minutes
Result: Matter Heard

03/22/2018 **Stipulation and Order**
Stipulation and Order Extending Deadline to File Petitioner's Motion for Attorney's Fees and Costs

03/22/2018 **Notice of Entry of Stipulation and Order**
Notice of Entry of Stipulation and Order

03/30/2018 **Notice of Appeal**
Respondent Las Vegas Metropolitan Police Department's Notice of Appeal

03/30/2018 **Case Appeal Statement**
Respondent Las Vegas Metropolitan Police Department's Case Appeal Statement

04/03/2018 **Motion to Stay**
Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time

04/04/2018 **Opposition to Motion**
Joint Opposition to Motion for Reconsideration and Stay Pending Reconsideration

04/04/2018 **Certificate of Service**
Certificate of Service (Corrected) Re: Joint Opposition to Motion for Reconsideration and Stay Pending Reconsideration

04/09/2018 **Opposition to Motion**
Joint Opposition to Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time

04/10/2018 **Motion For Stay** (9:30 AM) (Judicial Officer Miley, Stefany)
Las Vegas Metropolitan Police Department's Motion for Stay Pending Resolution on Appeal on an Order Shortening Time
Parties Present
Minutes
Result: Motion Denied

04/13/2018 **Order**
Order

04/13/2018 **Notice of Appeal**
Notice of Cross-Appeal

04/13/2018 **Case Appeal Statement**
Case Appeal Statement

04/16/2018 **Notice of Entry of Order**
Notice of Entry of Order

04/18/2018 **Order Denying**
Order Denying Las Vegas Metropolitan Police Department's Motion for Reconsideration and for Stay Pending Reconsideration

04/18/2018 **Notice of Entry of Order**
Notice of Entry of Order Denying Las Vegas Metropolitan Police Department's Motion for Reconsideration and For Stay Pending Reconsideration

04/27/2018 **CANCELED Motion For Reconsideration** (10:00 AM) (Judicial Officer Miley, Stefany)
Vacated - Moot
Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration
04/23/2018 Reset by Court to 05/08/2018
05/08/2018 Reset by Court to 04/27/2018

04/27/2018 **CANCELED Hearing** (10:00 AM) (Judicial Officer Miley, Stefany)
Vacated - Moot
Hearing: Las Vegas Metropolitan Police Department's Motion for Reconsideration and Stay Pending Reconsideration

05/08/2018 **CANCELED Status Check** (9:30 AM) (Judicial Officer Miley, Stefany)
Vacated
03/28/2018 Reset by Court to 05/08/2018

FINANCIAL INFORMATION

Defendant Las Vegas Metropolitan Police Department			
	Total Financial Assessment		474.00
	Total Payments and Credits		474.00
	Balance Due as of 04/19/2018		0.00
11/08/2017	Transaction Assessment		450.00
11/08/2017	Fee Waiver		(450.00)
03/30/2018	Transaction Assessment		24.00
03/30/2018	Fee Waiver		(24.00)
Petitioner Las Vegas Review-Journal			
	Total Financial Assessment		24.00
	Total Payments and Credits		24.00
	Balance Due as of 04/19/2018		0.00
04/16/2018	Transaction Assessment		24.00
04/16/2018	Efile Payment	Receipt # 2018-25859-CCCLK	Las Vegas Review-Journal (24.00)
Plaintiff American Broadcasting Companies, Inc.			
	Total Financial Assessment		494.50
	Total Payments and Credits		494.50
	Balance Due as of 04/19/2018		0.00
11/02/2017	Transaction Assessment		450.00
11/02/2017	Efile Payment	Receipt # 2017-83429-CCCLK	American Broadcasting Companies, Inc. (450.00)
04/12/2018	Transaction Assessment		44.50
04/12/2018	Payment (Window)	Receipt # 2018-25291-CCCLK	Donald J. Green (44.50)

EXHIBIT 7



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16 Metropolitan Police Department

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 American Broadcasting Companies, Inc.; The
12 Associated Press; Cable News Network, Inc.;
13 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
14 Angeles Times Communications, LLC; The New
15 York Times Company; and WP Company LLC
16 d/b/a The Washington Post,

Case No.: A-17-764030-W
A-17-764169-W

Dept. No.: 2

15 Petitioners,

16 vs.

17 Las Vegas Metropolitan Police Department,

18 Respondent.

19 **LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S BRIEF REGARDING**
20 **FEES PERMITTED TO BE CHARGED IN RESPONDING TO PUBLIC RECORDS**
21 **REQUESTS**

21 Las Vegas Metropolitan Police Department (the "Department" or "LVMPD"), by and
22 through its attorney of record, Marquis Aurbach Coffing, hereby files its Brief Regarding Fees
23 Permitted to be Charged in Responding to Public Records Requests.

24 ///

25 ///

26 ///

27 ///

1 This Brief is made and based upon the papers and pleadings on file herein, the
2 Memorandum of Points and Authorities, and any oral argument allowed by the Court at a hearing
3 on this matter.

4 Dated this 14th day of February, 2018.

5 MARQUIS AURBACH COFFING

6 By: /s/ Jackie V. Nichols
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15 Attorneys for Respondent Las Vegas
16 Metropolitan Police Department

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I. INTRODUCTION**

19 Although the fee provisions within the Nevada Public Records Act ("NPRA") are
20 ambiguous, and even contradictory, the legislative history clarifies this confusion in support of
21 LVMPD's position—governmental agencies may charge for staff time when extraordinary use of
22 personnel is required to respond to public records requests. Despite the language in NRS
23 239.055 which could be interpreted to prohibit a governmental agency from charging a fee in
24 excess of \$0.50 per page, the legislative history plainly demonstrates that it was the intent to
25 limit only copy charges to no more than \$0.50 per page. Drafters, supporters, and Assemblymen
26 all recognized that if extraordinary personnel use was required, the governmental agency may
27 charge an additional fee, but any copying charges cannot exceed \$0.50 per page. The
28 Department's Fee Schedule comports with both NRS 239.052 and NRS 239.055.

Furthermore, "extraordinary personnel use" is not defined within the NPRA. Certainly,
there can be no doubt the amount time and effort LVMPD must undertake to respond to the
requests will require extraordinary use of its personnel. For instance, the Body Worn Camera
footage alone will take approximately 23 weeks for an initial review by a single employee.
Moreover, there are hundreds of reports that must be reviewed and redacted prior to disclosure.

1 As such, LVMPD requests that this Court find that NRS 239.052 and NRS 239.055, in tandem,
2 permit LVMPD to charge for staff time, in accordance with its Fee Schedule, in preparing the
3 requested documents for disclosure.

4 **II. STATEMENT OF FACTS**

5 On February 7, 2018, this Court held a hearing on Petitioner's request for public records
6 from LVMPD. After ruling on the petition, the Court determined that the fee provisions of the
7 NPRA were ambiguous and requested briefing from the parties to determine whether LVMPD
8 could charge for staff time. Importantly, this Court explicitly held it will not be waiving the cost
9 associated with producing the documents. See Transcript of February 7, 2018 hearing on file
10 herein at 54:23-55:1.

11 At issue are the NPRA's fee provisions, permitting a governmental entity to recover costs
12 it incurred as a result of responding to public records requests. Specifically, a governmental
13 entity may charge a fee for providing a copy of a public record. NRS 239.052(1). The entity's
14 fee cannot exceed the actual cost to the governmental entity to provide the copy of the public
15 record unless a specific statute or regulation sets forth otherwise. *Id.* Actual cost is defined as
16 direct cost related to the reproduction of a public record. NRS 239.005(1). A governmental
17 entity must prepare and maintain a list of the fees it charges at each office the governmental
18 entity provides copies. NRS 239.052(3).

19 The Legislature carved out an exception to this general rule if responding to the request
20 would require, as the case at bar, extraordinary use of personnel. If a request for a copy of a
21 public record would require a governmental entity to make extraordinary use of its personnel or
22 technological resources, the government entity may, in addition to any other fee authorized
23 pursuant to the statute, charge a fee not to exceed \$0.50 per page for such extraordinary use.
24 NRS 239.055(1). The fee charged by the governmental entity must be reasonable and must be
25 based on the cost that the governmental entity actually incurs for the extraordinary use of its
26 personnel or technological. *Id.* Notably, nothing in the statute defines "extraordinary use of
27 personnel."
28

1 A. **ASSEMBLY BILL 214 (1997).**

2 In 1997, the NPRA underwent a significant overhaul. On one hand, Assembly Bill 289
3 was drafted to address the definition of a public record, what constitutes "confidential" for
4 purposes of the Act, and disclosure concerns with public records. See Summary of AB 289
5 attached hereto as **Exhibit A**. On the other hand, Assembly Bill 214 was specifically crafted to
6 address the fee provisions, which are now codified at NRS 239.052 and NRS 239.055. See
7 Legislative History Compilation of AB 214 attached hereto at **Exhibit B**.

8 AB 274 was first introduced to the Assembly Committee on Government Affairs by
9 Chief Deputy, Secretary of State, Mr. Dale Erquiga. Former Secretary of State, Dean Heller,
10 opened the initial proceeding and testified that it should be the public policy of this state that
11 costs should never be used as a means of deterring public access to information about the
12 conduct and activities of government. *Id.* at p. 10. Mr. Erquiga continued by walking the
13 Committee through the AB 274. *Id.* In defining actual costs, Mr. Erquiga explained that it
14 meant if an employer had a lease and a maintenance agreement on a copier, the employee who
15 ran the copier could not charge those costs through on the record as the employer would always
16 pay the lease and maintenance agreement to make his own operating copies. *Id.* at 11. Thus, it
17 was always intended that "actual costs," as defined in NRS 239.005, meant paper, toner, discs,
18 and so forth. *Id.*

19 Mr. Erquia further clarified the extraordinary personnel exception purposed within AB
20 214. The following is the example Mr. Erquia gave at the hearing:

21 [I]f a person came into the Secretary of State's office and wanted a list of all
22 corporations which had filed pursuant to Nevada Revised Statutes (NRS), Chapter
23 82, a program would have to be written to pull the information out of the
24 database—which was extraordinary use of that office's technology.

25 *Id.* On May 28, 1997, Mr. Erquiga reiterated to the Senate Committee on Government Affairs
26 that the language "actual cost" in NRS 239.052(1) does not include cost an entity already incurs
27 such as personnel or lease on the machine. *Id.* at 64. On the other hand, section 3 of AB 214
28 (codified at NRS 239.055) established an exception when extraordinary use of personnel was
required. *Id.* at 65. The purpose behind this section was to recover government costs. At the

1 same hearing, Mr. Alan Glover, Clerk/Recorder for Carson City, expressed concern for a high
2 demand of public records, especially in relation to groups harassing staff in the recorder's offices
3 by asking for exorbitant amounts of records thereby tying up the government. *Id.* at 67. In
4 response, Mr. Kent Lauer, Lobbyist for Nevada Press Association, assured the Committee that
5 the extraordinary use of personnel section would address Mr. Glover's concern of low fees in his
6 scenario. *Id.* at 71.

7 **B. NEVADA ATTORNEY GENERAL OPINION 2002-32.**

8 On August 27, 2002, the Nevada Attorney General issued an opinion regarding Washoe
9 County's questions about the fees to be charged in copying public records, specifically with
10 extraordinary staff time. *See* Op. Nev. Att'y Gen. No. 2002-32 attached hereto as **Exhibit C**.
11 Relying on the legislative history identified above (AB 214), the Attorney General determined
12 the authority granted to a governmental agency to recover actual costs for the "extraordinary
13 use" of personnel in retrieving and copying public records may have, at least in part, been
14 intended to make the agency whole in responding to nuisance inquiries or any inquiry that takes
15 up an unusual amount of staff time. *Id.* at p.245. In defining extraordinary use, the Attorney
16 General found that public records requests should generally take no more than 30 minutes to
17 respond and anything over the 30 minute mark was extraordinary. *Id.* Finally, the opinion
18 explains that the extraordinary use of personnel should be based on the actual hourly wage of the
19 lowest compensated individual reasonably available and qualified to respond to the public
20 records request. *Id.* at 246. It was the Attorney General's belief that this standard comports with
21 the definition of "actual costs" in Chapter 239 of NRS as being "the direct cost related to the
22 reproduction of a public record." NRS 239.005(1).

23 **C. SENATE BILL 123 (2007).**

24 In 2007, Senate Bill 123 proposed to add several amendments to the NPRA, including the
25 intent to foster democratic principles and the timeframe in responding to requests. *See* Senate
26 Bill 123 Summary attached hereto as **Exhibit D**. While the fee provisions were not specifically
27 discussed, Mr. Dan Musgrove shared his concern of low fees and payment for personnel time in
28

1 responding to requests. Below is the dialogue between Mr. Musgrove and Senator Care at the
2 hearing on February 26, 2007 before the Senate Committee on Government Affairs:

3 DAN MUSGROVE (University Medical Center of Southern Nevada): A letter
4 was sent to us from the Las Vegas Review-Journal (Exhibit K) asking for
5 documents. University Medical Center has been under the lights lately due to
6 issues taking place in southern Nevada, and the press has been active in asking for
7 documents. While we tried to respond to the voluminous request in Exhibit K, this
8 information is not easily produced in the manner they asked. Even though the
9 request was in writing and specific, *it takes staff time and resources, a week to
10 ten days, to determine how to bring the information together and produce it in a
11 manner the newspaper would like to see.* We are willing to do so, but *it displaces
12 job functions at the hospital* that need to take place. We responded to the Las
13 Vegas Review-Journal with a letter seeking payment for staff time to produce this
14 information. Senator Care felt taxpayers pay our salaries and we should set aside
15 normal duties to produce the documents. That is not in the best interest of our
16 hospital to set aside important duties such as financial collections and invoices to
17 work on public requests. How quickly we turn the request around and at what cost
18 to the hospital staff resources becomes a logistical matter. We would like to work
19 with the subcommittee on addressing those matters.

20 SENATOR CARE: If an office gets a request for documents and there is time for
21 staff to retrieve and copy the documents, it would not be the most important
22 function the office serves, but those people would work for taxpayers at that time
23 by satisfying a taxpayer's request for public records. Overhead costs would have
24 to be eaten as a matter of public policy. *Whatever happened with the request for
25 a check for staff time?*

26 MR. MUSGROVE: *I have not seen an answer to that. We were looking at staff
27 time of at least two weeks to garner this information. That is a lot of time to take
28 away from normal duties.* One good thing about S.B. 123 is it covers
nongovernmental entities. The Las Vegas Sun's request was about our Medical
Executive Committee's (MEC) votes on contracts we were using. The MEC is not
part of UMC, and we cannot force them to provide information. The Las Vegas
Sun claims UMC refused to provide information. There was not a refusal by
UMC, which is the governmental entity; it was a refusal by the MEC, which is a
panel that does not operate under the Open Meetings Act. With some provisions
in this bill, including the ability to redact information, the MEC would have been
willing to provide some of those minutes.

See Committee Minutes from Hearing attached hereto as **Exhibit E**. As the dialogue
demonstrates, the concept of paying staff time in extraordinary circumstances was not
foreclosed.

D. ASSEMBLY BILL 31 (2013).

In 2013, Assembly Bill 31 was introduced to amend the NPRA to include a record
official for government agencies, require regulations regarding forms to be used with public
records requests, and identify the existing statutory exceptions to the NRPA. See Assembly Bill

31 Summary attached hereto as **Exhibit F**. Like SB 123, AB 31 did not, in particular, pertain to the fee provisions of the NPRA. Nonetheless, some discussions regarding "actual costs" were had at the May 27, 2013 Senate Committee on Government Affairs hearing:

Senator Goicoechea: I am concerned because it says actual cost can only be the direct cost of the reproduction and not include the research involved in finding a document. I realize this only pertains to State government and not local government; however, I am concerned about where this will go. There is inherent cost with searching records.

Mr. Munro: That is not part of the bill. We have left the actual cost to your staff to determine; *however, many agencies add personnel costs.*

See Committee Minutes for May 27, 2013 attached hereto as **Exhibit G** at p. 2. (emphasis added).

E. SENATE BILL 74 (2013).

In addition to AB 31, Senate Bill 74 was also introduced during the 77th Legislature regarding amendments to certain provisions of the NPRA. This bill specifically amended the language in NRS 239.055 to include the limitation of \$0.50 per page when copying documents.¹ See Committee Minutes for February 20, 2013 attached hereto as **Exhibit H**. The main concern regarding this amendment was the inconsistency across the agencies for the fees charged for copying records. *Id.* at p. 15. Many supporters testified that they were often charged anywhere from \$1 to \$2 per page for copying records. *Id.* at p. 15-37, generally. In support of the amendment, Barry Smith, Executive Director, Nevada Press Association, testified that many agencies charge \$1 a page to supply a stream of revenue for the agencies. *Id.* at p.19. While Mr. Smith agreed that "[i]t was not the intent of the public records law to charge a person that is the responsibility of the agency in the first place," he, nonetheless, acknowledged that there is a provision that allows agencies to be compensated for extraordinary use of personnel. *Id.* On April 10, 2013, another hearing was held before the Senate Committee on Government Affairs. See Committee Minutes dated April 10, 2013 attached hereto as **Exhibit I**. At this hearing, the Committee passed SB 74 with an amendment to reflect an adjustment for the copy rate of \$0.50 per page, rather than the initial \$0.10 per page. *Id.*

¹ Initially, the bill proposed a \$0.10 limitation on copy charges.

1 Once SB 74 passed the Senate Committee, it moved to the Assembly Committee on
2 Government Affairs to be heard on May 3, 2013. See Committee Minutes dated May 3, 2013
3 attached hereto as **Exhibit J**. Interestingly, the entire hearing on May 3rd stands for the
4 proposition that the additional language of \$0.50 per page, now codified in NRS 239.055, was
5 strictly limited to copying costs and did not apply to staff time. Below are the relevant excerpts,
6 including from Senator Tick Segerblom who proposed SB 74:

7 Senator Segerblom: . . . [T]hey can charge a reasonable fee of 50 cents. Under
8 extraordinary circumstances, the can charge additional fees. . . .

9 *Id.* at p.19.

10 Assemblyman Stewart: I appreciate you bringing this bill in order to save the
11 public money and give them more access. If someone from out of state or out of
country requested information, would this preclude the agencies from charging
the requester postage.

12 Senator Segerblom: This is actually a question I never thought of. We do not
13 have anything in the bill regarding postage, so I do not think it would. ***This is
basically only the copying charge, so I would assume it would not.***

14 *Id.* at p. 21. (emphasis added).

15 Taylor McCadney: Assemblyman Daly, the section that you are talking about is
16 section 4, subsection 1, where it states, "Except as otherwise provided in this
17 subsection, a governmental entity may charge a fee for providing a copy of a
18 public record. Such a fee must not exceed the actual cost to the governmental
19 entity to provide the copy of the public record unless a specific statute pr
regulation sets a fee" In section 4.5, it also goes into detail about how they
can charge extra for extraordinary use of technology or manpower. That is where
the leeway comes from for them to charge more than the actual cost of a copy.

20 Assemblyman Daly: We knew it was a lot of paper and they charges us a fair
price based on their costs. They did include staff time and various things. . . .

21 *Id.* at p.23. In addition to discussing the 50 cent fee limitation regarding the amount an agency
22 may charge to make copies, fees regarding copies of DVDs and videos were also discussed. *Id.*
23 at p.24. Nothing in SB 74 or in the current statute, however, reference costs related to DVDs and
24 videos and the legislature declined to include that include in SB 74. See Committee Minutes on
25 May 15, 2013 attached hereto as **Exhibit K**.

1 **F. LVMPD'S RESPONSE REQUIRES EXTRAORDINARY USE OF**
2 **PERSONNEL AND TECHNOLOGICAL RESOURCES.**

3 Given this Court's ruling on February 7, 2018, LVMPD has attempted to ascertain the
4 number of documents it has in its possession that are responsive to Petitioners' requests. At the
5 hearing, the Court specifically enumerated the documents to be produced, which includes:

- 6 • 911 calls;
- 7 • Body Worn Camera ("BWC") footage;
- 8 • Dash cam;²
- 9 • CCTV Videos;
- Evidence Logs;
- Dispatch Information;
- Interview Reports; and
- Search Warrant Returns³

10 See Transcript at 37:15-19. With respect to the 911 calls, without actually reviewing all 911
11 calls, LVMPD estimates it received upwards of 1,600 calls in the first 24 hours regarding the 1
12 October shooting. In accordance with the Court's ruling, LVMPD must redact any personal
13 identifying information from these phone calls. Today, LVMPD employs three research analysts
14 who are qualified and trained to perform redactions of 911 calls. Moreover, LVMPD only
15 maintains one license for redacting 911 calls, and therefore, it is uncertain whether more than
16 one person at a time is able to perform the redactions.

17 Lt. Corey Moon has indicated there is approximately 748 hours of BWC footage related
18 to the 1 October shooting. See Declaration of Lt. Corey Moon attached hereto as **Exhibit M**.
19 The redaction process for BWC footage is quite time consuming as it requires: (1) an initial
20 review of the footage to determine what content needs to be redacted; (2) redacting the
21 information, both video and audio, at frame level editing; and (3) quality control review by an
22 uninvolved operator to ensure redaction is completed. *Id.* LVMPD only employs two officers
23 that are specifically trained and assigned to redact BWC footage. Both of the officers have
24

25
26 ² LVMPD does not use Dash Cams for its vehicles.

27 ³ It is the Department's position that this request is moot given Judge Cadish's ruling unsealing the search
28 warrant returns.

1 special high performance computers and dedicated redaction software used to redact videos. *Id.*
2 The follow chart is an estimate of the time and cost associated with producing the BWC footage:

	<u>Hours of Video</u>	<u>Rate</u>	<u>Time Spent</u>	<u>Total Cost</u>
Initial Review	748	1.25 hours	935 hours	\$46,750
Redaction Process	748	4 hours	2992 hours	\$149,600 (low)
	748	10 hours	7480 hours	\$347,000 (high)
Quality Control	748	1 hour	748 hours	\$37,400

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9 Lt. Moon estimates if the project is properly staffed, it could take anywhere from six months or
10 longer to complete. *Id.*

11 To shed some light on these figures, it is important to know that it took LVMPD,
12 specifically two squads of people from the Critical Incident Review Team (CIRT), 60 days to
13 review all this footage just for investigatory purposes. *Id.* Given the amount of video hours, and
14 an entire different purpose, it would take *at least* 23 weeks for one employee to complete the
15 initial review process, which would require the employee to review this graphic footage on a
16 continuing basis. *Id.* Surely, it is understandable that LVMPD owes a duty to its employees to
17 be mindful of their mental health. This material is extremely graphic and it is against LVMPD
18 policy to assign a single person to review this material. With that said, LVMPD can only require
19 the trained employees to review the materials a few hours per day due to potential issues
20 involved with reviewing the graphic material.

21 The dispatch information requested will also require the use of extraordinary personnel.
22 Again, without diving into the information, LVMPD approximates that there are 18,000
23 transmissions collectively for all LVMPD channels. Furthermore, this dispatch information uses
24 CAD (Computer Aided Dispatch), which is considered a Geographic Information System
25 ("GIS") in accordance with NRS 239.054.

26 While LVMPD cannot say for certain the number of interview reports, it estimates
27 upwards of 800 reports. Importantly, these reports will likely contain personal information that
28

1 will require redaction. Like much of the other information requested, this will require employees
2 to review and redact personal, identifiable information, requiring significant use of personnel.

3 It is more than apparent that this is not a typical records request where the governmental
4 agency can just copy documents in a matter of minutes. Extraordinary effort by LVMPD
5 personnel will be required to ultimately complete these disclosures. Pursuant to NRS 239.052
6 and NRS 239.055, LVMPD maintains a Fee Schedule outlining the costs associated with
7 reproduction of certain documents, including when extraordinary use of personnel is required.
8 See LVMPD's fee schedule attached hereto as **Exhibit L**. Notably, LVMPD charges \$0.31 for
9 copying documents, which is in compliance with NRS 239.055. *Id.*

10 **III. LEGAL ARGUMENT**

11 The court may only look beyond the plain language of the statute if it is ambiguous or
12 silent on the issue in question. *Segovia v. Eighth Judicial District Court in and for County of*
13 *Clark*, 407 P.3d 783, 787 (2017). A statute's language is ambiguous when it is capable of more
14 than one reasonable interpretation. *Id.* (citation omitted). When construing an ambiguous
15 statute, legislative intent is controlling, and the court looks to legislative history for guidance.
16 *Griffith v. Gonzales-Alpizar*, 132 Nev. Adv. Op. 38, 373 P.3d 86 (2016). Limited resort to
17 reports of legislative committee hearings is appropriate to clarify or interpret legislation that is
18 doubtful import or effect. *Ballotis v. Clark County*, 102 Nev. 568, 570, 729 P.2d 1338, 1339-40
19 (1986). Here, when reading the two fee provisions of the NPRA in tandem, the statutory
20 language is ambiguous as to whether a governmental entity may charge a fee for staff time, in
21 excess of \$0.50, when extraordinary use of personnel is utilized. Furthermore, the term
22 extraordinary use of personnel is itself ambiguous and not defined in the statute. Thus, it is
23 appropriate for this Court to look to the legislative history of NRS 239.052 and NRS 239.055 to
24 clarify the ambiguities.

25 **A. LVMPD'S RESPONSE REQUIRES EXTRAORDINARY USE OF** 26 **PERSONNEL AND TECHNOLOGICAL RESOURCES.**

27 Before reaching the conclusion that LVMPD can charge for staff time under NRS
28 239.055, the Court must first find that LVMPD responses to the records requests will require

1 extraordinary use of staff time and/or technological resources. Neither the NPRA nor the
2 legislative history defines "extraordinary use of personnel." In 2002, however, the Nevada
3 Attorney General's office issued an opinion regarding extraordinary use of personnel. See
4 **Exhibit C.** After reviewing the legislative history, the Attorney General concluded that a
5 response to a public records request generally takes 30 minutes. *Id.* at p.245.

6 There is no dispute that the time and effort LVMPD must undertake to respond to these
7 requests falls under the extraordinary use of personnel exception. As indicated above, there are
8 hundreds of documents LVMPD must review and redact before disclosing. More importantly,
9 however, the review, redaction, and quality control process involved with disclosing the 911
10 calls and BWC footage will, alone, take months to perform with the limited, qualified manpower
11 LVMPD has designated for those positions. In addition, it is imperative to keep in mind that the
12 individuals performing these tasks cannot ignore their day-to-day job duties. Thus, the
13 Department must strike a balance between its mission, protecting the city, and responding to
14 these requests. LVMPD has demonstrated that responding to these requests will, undoubtedly,
15 require the extraordinary use of personnel.

16 **B. LVMPD IS PERMITTED TO CHARGE FOR STAFF TIME WHEN**
17 **EXTRAORDINARY EFFORTS ARE UTILIZED.**

18 The legislative history clearly demonstrates LVMPD can charge for staff time, in excess
19 of \$0.50 per page, when extraordinary efforts are used. On its face, NRS 239.055 is ambiguous
20 and contradictory because, on one hand, it permits governmental agencies to charge for
21 extraordinary use of personnel so long as that cost is reasonable and based on the cost the
22 governmental actually incurs. The statutory language, however, also contains a limitation
23 requiring the governmental agency to not a charge a fee in excess of \$0.50 per page. A cursory
24 review of the legislative history regarding these fee provisions and the NRPA generally reveals
25 that it was the intent of the drafters to limit that amount a governmental entity may charge for
26 making copies of documents.

27 At the various committee hearings, many supporters of the NPRA felt their efforts in
28 obtaining public records were often impeded due to the cost governmental agencies charged in

1 making copies of the documents. The 1997 amendments to the NPRA, specifically AB 214,
2 codified NRS 239.052 and NRS 239.055 limiting the governmental agency to only charge *actual*
3 *costs* incurred as a result of its response. Importantly, the Legislature recognized that, in certain
4 instances, responding to public records request may interfere with the governmental agency's job
5 function. As such, the Legislature codified an exception when extraordinary use of personnel
6 and/or technological resources was necessary. Over the years, while not directly at issue, the
7 Legislature and supporters recognized that staff time was certainly included when the
8 extraordinary use of personnel was required.

9 In 2013, Senator Tick Segerblom proposed SB 74, which added several amendments
10 including the "50 cent fee" language now codified in NRS 239.055. The provision at issue
11 specifically provides:

12 Except as otherwise provided in NRS 239.054 regarding information provided
13 from a geographic information system, if a request for a copy of a public record
14 would require a governmental entity to make extraordinary use of its personnel or
15 technological resources, ***the governmental entity may, in addition to any other***
16 ***fee authorized pursuant to this chapter, charge a fee not to exceed 50 cents per***
17 ***page*** for such extraordinary use. Such a request must be made in writing, and
upon receiving such a request, the governmental entity shall inform the requester,
in writing, of the amount of the fee before preparing the requested information.
The fee charged by the governmental entity must be reasonable and must be
based on the cost that the governmental entity actually incurs for the
extraordinary use of its personnel or technological resources.

18 NRS 239.055(1). During a Assembly Committee hearing, Senator Segerblom and his intern,
19 Taylor McCadney, were asked several questions regarding whether additional charges, such as
20 postage and staff time, were prohibited as a result of the \$0.50 per page limitation. Throughout
21 the hearing, both Senator Segerblom and Ms. McCadney clarified that the \$0.50 fee limitation
22 strictly applied to copying charges and the purpose of NRS 239.055 was to allow leeway if
23 additional cost was incurred as a result of extraordinary use of personnel. The rationale of the
24 \$0.50 fee copying charge was due to inconsistencies across governmental agencies that charged
25 anywhere from \$1-2 per page for copies, including the courts. In essence, the language that "the
26 fee charged by the governmental entity must be reasonable and must be based on the cost that the
27 governmental entity actually incurs" would be rendered superfluous if a governmental agency
28 was only limited to charging a \$0.50 fee for the extraordinary use of personnel. Moreover, the

1 “per page” language added after \$0.50 indicates that the fee is limited to copying. In instances
2 where actually copying documents, as we have here in relation to the 911 calls and BWC
3 footage, is not relevant, it is confusing how the “per page” language should be construed.

4 The legislative history, from 1997 through 2013, clearly evidences that LVMPD is
5 permitted to charge for staff time in responding to the records requests, so long as the cost is
6 reasonable and actually incurred by LVMPD. In accordance with NRS 239.052(3), LVMPD
7 maintains a Fee Schedule itemizing the charges for specific records, including when
8 extraordinary use of personnel is required. LVMPD’s Fee Schedule complies with NRS 239.055
9 as it only charges \$0.031 for copies. As already indicated by Lt. Moon’s declaration, BWC
10 footage is redacted at a rate of \$50 per hour.⁴ LVMPD, however, is still working on an estimate
11 regarding the other information to be provided and will inform Petitioners of the total estimate
12 pursuant to NRS 239.055(1). Responding to Petitioners’ requests will be time consuming and
13 costly to LVMPD. While LVMPD is responsible for responding to public records requests as a
14 governmental agency, it was certainly not the intent of the NPRA to require LVMPD to displace
15 its entire governmental function in order to respond to records requests. In conformity with the
16 legislative history, LVMPD requests this Court to find that LVMPD may charge for staff time
17 pursuant to NRS 239.055(1) in responding to Petitioners’ requests.

18 **IV. CONCLUSION**

19 LVMPD’s Fee Schedule is reasonable, based on actual costs LVMPD will incur, and
20 contemplated by the legislative history of NRS 239.052 and NRS 239.055. Based on the

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ⁴ For consistency, LVMPD charges a flat rate rather than an employee’s overall hourly rate, which is
28 higher than the flat fee.

1 foregoing, LVMPD respectfully requests the Court to find that LVMPD may charge the rates for
2 its services, pursuant to its Fee Schedule, that will be necessary to respond to Petitioners' public
3 record requests.

4 Dated this 14th day of February, 2018.

5 MARQUIS AURBACH COFFING

6
7 By: /s/ Jackie V. Nichols
8 Craig R. Anderson, Esq.
9 Nevada Bar No. 6882
10 Nick D. Crosby, Esq.
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17 Metropolitan Police Department
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CERTIFICATE OF SERVICE

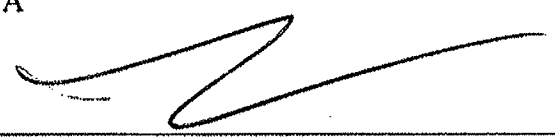
I hereby certify that the foregoing LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S BRIEF REGARDING FEES PERMITTED TO BE CHARGED IN RESPONDING TO PUBLIC RECORDS REQUESTS was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 14th day of February, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:⁵

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Attorneys for Petitioner Las Vegas Review-Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A



An employee of Marquis Aurbach Coffing

⁵ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT 8



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Attorneys for Respondent Las Vegas
Metropolitan Police Department

DISTRICT COURT

CLARK COUNTY, NEVADA

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; Scripps Broadcasting
Holdings LLC d/b/a KTNV-TV; and WP
Company LLC d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Las Vegas Review-Journal,

Petitioner,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W
Consolidated Case No.: A-17-764169-W

Dept. No.: 23

NOTICE OF ENTRY OF ORDER

TO: ALL INTERESTED PARTIES; AND THEIR ATTORNEYS OF RECORD:

...

...

...

1 PLEASE TAKE NOTICE that an Order was entered on the 13th day of April, 2018, a
2 copy of which is attached hereto.

3 Dated this 16th day of April, 2018.

4 MARQUIS AURBACH COFFING
5

6 By: /s/ Jackie V. Nichols
7 Craig R. Anderson, Esq.
8 Nevada Bar No. 6882
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CERTIFICATE OF SERVICE

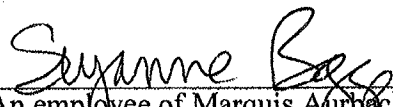
I hereby certify that the foregoing NOTICE OF ENTRY OF ORDER was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 16th day of April, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Attorneys for Petitioner Las Vegas Review-Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

Steven D. Grierson

1 **Marquis Aurbach Coffing**
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13 ncrosby@maclaw.com
14 jnichols@maclaw.com
15 Attorneys for Respondent Las Vegas
16 Metropolitan Police Department

DISTRICT COURT
CLARK COUNTY, NEVADA

11 American Broadcasting Companies, Inc.; The
12 Associated Press; Cable News Network, Inc.;
13 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
14 Angeles Times Communications, LLC; The New
15 York Times Company; Scripps Broadcasting
16 Holdings LLC d/b/a KTNV-TV; and WP
17 Company LLC d/b/a The Washington Post,

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Las Vegas Review-Journal,

Petitioner,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

Case No.: A-17-764030-W
Consolidated Case No.: A-17-764169-W

Dept. No.: 23

Date of Hearing: March 22, 2018
Time of Hearing: 9:30 A.M.

ORDER

The Court held a status check in the above-referenced matter on March 22, 2018, with appearances by Justin Shiroff, Esq., on behalf of Petitioners American Broadcasting Companies, Inc.; The Associated Press; Cable News Network, Inc.; Chesapeake Media I, LLC, d/b/a KSNV-TV; Los Angeles Times Communications, LLC; The New York Times Company; Scripps

Page 1 of 6

MAC:14687-102 Order (Status Check on 3-22-18) 4/3/2018 8:19 AM

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 Broadcasting Holdings LLC d/b/a KTNV-TV; and WP Company LLC d/b/a The Washington
2 Post, and Alina M. Shell, Esq., on behalf of Petitioner Las Vegas Review-Journal (collectively
3 "Petitioners"), and Jackie Nichols, Esq., on behalf of the Respondent Las Vegas Metropolitan
4 Police Department ("LVMPD"), the Court having considered the points and authorities, and for
5 good cause appearing, the Court hereby finds as follows:

6 1. On March 16, 2018, LVMPD filed a Motion for Reconsideration and for Stay
7 Pending Reconsideration.

8 2. On March 19, 2018, this matter was reassigned from the Honorable Judge Richard
9 Scotti to the Honorable Judge Stefany Miley.

10 3. The Court proceeded to schedule a status check on March 22, 2018 at 10:00 a.m.
11 to address the briefing schedule of LVMPD's Motion for Reconsideration and for Stay Pending
12 Reconsideration.

13 Accordingly, the Court orders as follows:

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that LVMPD shall
15 supplement its Motion for Reconsideration regarding the March 2, 2018 Order by no later than
16 March 30, 2018;

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioners shall
18 submit an opposition to LVMPD's Motion for Reconsideration regarding the March 2, 2018
19 Order by no later than April 13, 2018;

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that that LVMPD shall
21 submit a reply in support of its Motion for Reconsideration regarding the March 2, 2018 Order
22 by no later than April 20, 2018;

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a hearing pertaining to
24 LVMPD's Motion for Reconsideration regarding the March 2, 2018 Order is scheduled for April
25 27, 2018 at 10:00 a.m.

26 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that LVMPD's Motion for
27 Reconsideration regarding the March 9, 2018 Order shall be advanced until after the Court enters
28 a decision on LVMPD's Motion for Reconsideration regarding the March 2, 2018 Order.

MARQUIS AURBACH COFFING

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Las Vegas, Nevada 89145
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the matter is stayed
2 until April 27, 2018 and should LVMPD not prevail, it must immediately begin turning over the
3 requested public records; and

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that The Washing Post and KSNV-TV are prohibited from claiming any rights to fees or costs in accordance with NRS 239.011(2).

IT IS SO ORDERED.

DATED this ____ day of _____, 2018.

see next page
DISTRICT COURT JUDGE

Respectfully Submitted By:

MARQUIS AURBACH COFFING

By:

[Signature]
Craig R. Anderson, Esq.

Nevada Bar No. 6882

Nick D. Crosby, Esq.

Nevada Bar No. 8996

Jackie V. Nichols, Esq.

Nevada Bar No. 14246

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Las Vegas, Nevada 89145

Attorneys for Respondent Las Vegas Metropolitan Police Department

Approved as to form and content:

BALLARD SPAHR, LLP

By:

[Signature]
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Justin A. Shiroff, Esq.

Nevada Bar No. 12869

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Las Vegas, Nevada 89135

Attorneys for Petitioners American

Broadcasting Companies, Inc.; The Associated

Press; Cable News Network, Inc.; Chesapeake

Media I, LLC, d/b/a KSNV-TV; Los Angeles

Times Communications, LLC; The New York

Times Company; Scripps Broadcasting

Holdings LLC d/b/a KTNV-TV; and WP

Company LLC d/b/a The Washington Post

MCLECHIE SHELL LLC

By:

see next page
Margaret A. McLetchie, Esq.

Nevada Bar No. 10931

Alina M. Shell, Esq.

Nevada Bar No. 11711

701 East Bridger Avenue, Suite 520

Las Vegas, Nevada 89101

Attorneys for Petitioner Las Vegas

Review-Journal

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that The Washing Post and KSNV-TV are prohibited from claiming any rights to fees or costs in accordance with NRS 239.011(2).

IT IS SO ORDERED.

DATED this 11th day of April, 2018.

DISTRICT COURT JUDGE

JUDGE STEFANY A. MILEY

Respectfully Submitted By:
MARQUIS AURBACH COFFING

By:

see previous page
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Attorneys for Respondent Las Vegas Metropolitan Police Department

Approved as to form and content:

BALLARD SPAHR, LLP

By:

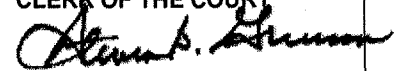
see previous page
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Media I, LLC, d/b/a KSNV-TV; Los Angeles
Times Communications, LLC; The New York
Times Company; Scripps Broadcasting
Holdings LLC d/b/a KTNV-TV; and WP
Company LLC d/b/a The Washington Post

MCLETCHE SHELL LLC

By:

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EXHIBIT 9

**Marquis Aurbach Coffing**

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Attorneys for Respondent Las Vegas

Metropolitan Police Department

DISTRICT COURT**CLARK COUNTY, NEVADA**

American Broadcasting Companies, Inc.; The
Associated Press; Cable News Network, Inc.;
Chesapeake Media I, LLC, d/b/a KSNV-TV; Los
Angeles Times Communications, LLC; The New
York Times Company; Scripps Broadcasting
Holdings LLC d/b/a KTNV-TV; and WP
Company LLC d/b/a The Washington Post,

Case No.: A-17-764030-W
A-17-764169-W

Dept. No.: 23

Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

**RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE
OF APPEAL**

Respondent Las Vegas Metropolitan Police Department, by and through their attorneys of
record, Marquis Aurbach Coffing, hereby appeals to the Supreme Court of Nevada from the

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1 Order Granting Amended Public Records Act Applications Pursuant to Nev. Rev. Stat.
2 239.011/Petition for Writ of Mandamus filed and notice on March 2, 2018 and Order filed on
3 March 9, 2018, attached hereto as **Exhibit A** and **Exhibit B**, respectively.

4 Dated this 30th day of March, 2018.

5 MARQUIS AURBACH COFFING

6
7 By: /s/ Jackie V. Nichols
8 Nick D. Crosby, Esq.
9 Nevada Bar No. 8996
10 Jackie V. Nichols, Esq.
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14 Attorneys for Respondent, Las Vegas
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CERTIFICATE OF SERVICE

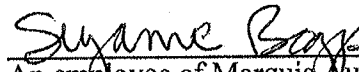
I hereby certify that the foregoing **RESPONDENT LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S NOTICE OF APPEAL** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 30th day of March, 2018. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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Attorneys for Petitioner Las Vegas Review-
Journal

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

N/A


An employee of Marquis Aurbach Coffing

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

EXHIBIT A

Steven D. Grierson

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14 jnichols@maclaw.com
15 Attorneys for Respondent Las Vegas
16 Metropolitan Police Department

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 American Broadcasting Companies, Inc.; The	
12 Associated Press; Cable News Network, Inc.;	
13 Chesapeake Media I, LLC, d/b/a KSNV-TV; Los	Case No.: A-17-764030-W
14 Angeles Times Communications, LLC; The New	A-17-764169-W
15 York Times Company; and WP Company LLC	
16 d/b/a The Washington Post,	
17	Dept. No.: 2
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Petitioners,

vs.

Las Vegas Metropolitan Police Department,

Respondent.

19 **ORDER GRANTING AMENDED PUBLIC RECORDS ACT APPLICATIONS**
20 **PURSUANT TO NEV. REV. STAT. § 239.011/PETITION FOR WRIT OF MANDAMUS**

21 This matter came before the Court on Petitioners American Broadcasting Companies,
22 Inc. ("ABC"), the Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake
23 Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC
24 ("Los Angeles Times"), The New York Times Company ("The New York Times"), Scripps
25 Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The
26 Washington Post's ("Washington Post") (collectively the "Coalition") Amended Public Records
27 Act Application Pursuant to Nev. Rev. Stat. § 239.011/ Petition for Writ of Mandamus; and
28 Petitioner Las Vegas Review-Journal's ("Review-Journal", and collectively with the Coalition,

1 "Petitioners") Amended Public Records Act Application Pursuant to Nev. Rev. Stat. 239.011/
2 Petition for Writ of Mandamus (collectively, the "Petitions").

3 The Review-Journal filed its Opening Brief in Support of Amended Public Records Act
4 Application Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on December
5 8, 2017. The Coalition filed its Substantive Joinder thereto on December 15, 2017. Metro filed
6 its Opposition to Petitioner Las Vegas Review Journal's Public Records Act Application
7 Pursuant to Nev. Rev. Stat. § 239.001/Petition for Writ of Mandamus on January 8, 2018. Metro
8 filed its Opposition to the Coalition's Petition on January 16, 2018. The Review-Journal filed its
9 Reply on January 22, 2018. Finally, the Coalition filed its Reply on January 31, 2018.

10 At the February 7, 2018 hearing on the Petitions, Joel E. Tasca, Esq., of the law firm
11 Ballard Spahr LLP appeared on behalf of the Coalition; Maggie McLetchie, Esq., of the law firm
12 McLetchie Shell LLC, appeared on behalf of the Review-Journal; and Nick D. Crosby, Esq. and
13 Jacqueline Nichols, Esq., of the law firm Marquis Aurbach Coffing, appeared on behalf of the
14 Las Vegas Metropolitan Police Department ("Metro"). Based on the Court's careful review of
15 the parties' briefs, oral argument by counsel and the pleadings and papers on file, for the reasons
16 stated by the Court and reflected in the record, and for good cause shown, the Court rules as
17 follows:

- 18 1. The Nevada Public Records Act (the "Act") is codified at Nev. Rev. Stat. § 239.
- 19 2. The Act provides that public records must be made available to the public for
20 inspection or copying.
- 21 3. The purpose of the Act is to foster democratic principles by providing members of
22 the public with access to inspect and copy public records to the extent permitted under Nevada
23 law.
- 24 4. The Act, as well as the First Amendment to the Constitution, provides the press
25 with the ability to obtain and publish information about issues that affect the public interest and
26 information about the conduct of government officials. They further provide the press with the
27 tools to ensure that the government is responsible and efficient.

28

1 5. Furthermore, they provide the press with the tools that assist the public in holding
2 its government accountable.

3 6. Government records are presumed to be public records. Any restriction to the
4 public's right of access to public records must be narrowly applied.

5 7. Metro bears a heavy burden in preventing disclosure of public records pursuant to
6 the Act.

7 8. Metro must satisfy a two-pronged test to justify non-disclosure. Metro must first
8 establish, by a preponderance of the evidence, that the public records sought are confidential.
9 Metro must then prove, by a preponderance of the evidence, that its interest in non-disclosure
10 outweighs the public's interest in access.

11 9. The Act establishes a presumption in favor of public access.

12 10. The Court recognizes that governmental entities are generally required to provide
13 citations to legal authority supporting non-disclosure within five (5) business days pursuant to
14 Nev. Rev. Stat. § 239.0107(d). However, as to the Petitioners' argument that Metro waived the
15 right to withhold public records in this case by failing to timely respond, the Court rejects this
16 argument.

17 11. The Court finds that there was no implied, express, or statutory waiver due to
18 Metro's pre-petition conduct, particularly with respect to the extraordinary circumstances
19 surrounding the October 1 Massacre.

20 12. The Court finds that Metro had a duty to redact confidential information and
21 produce the non-confidential portions of the public records, if it contended that the requested
22 public records were confidential or otherwise protected from disclosure. Wholesale withholding
23 of public records with the general claim of confidentiality suggests to this Court that the records
24 have not been sufficiently scrutinized.

25 13. The Court finds that asserting a blanket protection over all categories of public
26 records is improper.

27 14. Metro had a duty to prove, by a preponderance of the evidence, that each public
28 record (or part thereof) is confidential. The Court finds that Metro failed to meet this burden.

1 15. The Court finds that there exists no rule that records can be withheld merely
2 because they relate to an ongoing investigation. Metro still has the duty to show that the public
3 records of the ongoing investigation are confidential.

4 16. In light of Metro's preliminary report concerning the October 1 Massacre, the
5 entire universe of investigative records cannot be so sensitive as to warrant wholesale
6 withholding.

7 17. Additionally, Sheriff Lombardo publicly stated that it is Metro's responsibility to
8 ensure timely disclosure of public records in this case.

9 18. Metro, however, failed to specifically explain how the public record production
10 would impede the investigation.

11 19. To the extent that the disclosure might have some detrimental impact on the
12 investigation, that impact is outweighed by the public interest. The public has the right to know
13 the manner in which its government officials are carrying out their public safety responsibilities.

14 20. The Court finds that any personal privacy concerns implicated by the public
15 records disclosure can be remedied by redactions, including individual names (other than
16 government officials), addresses, phone numbers, social security numbers, descriptions of
17 individuals, and social media data for all individuals.

18 21. The Court also rejects Metro's contention – that the horrifying 911 calls may be
19 traumatic to close family members who hear the voices of their loved ones – as too speculative to
20 weigh against disclosure.

21 22. In the rare and limited circumstances that any such concern may arise, Metro may
22 prepare a privilege log for future review and consideration by this Court.

23 23. The Court denies Metro's request for an in camera review. The Court finds that
24 the time has passed for Metro to assert any valid objection to production.

25 24. The Court finds that Metro has engaged in wholesale withholding of public
26 records with insufficiently specific reasons to do so.

27 25. The Court concludes that Metro failed to prove by a preponderance of the
28 evidence that any of the requested public records are confidential.

1 26. The Court further concludes that the strong public interest in favor of disclosure,
2 together with the strong presumption in favor of production, outweighs any governmental
3 interest in withholding the public records.

4 27. The Court finds that the public records sought include: 911 calls, body camera
5 data, as well as dash cams, CCTV videos, evidence logs, dispatch information, interview reports,
6 search warrant returns, affidavits of probable cause, purchase orders and no-bid contracts, and
7 information on any weapons obtained during the investigation into the October 1 Massacre.

8 Accordingly, and in light of the Court's findings in this case, the Court orders as follows:

9 IT IS HEREBY ORDERED that the Petitions are GRANTED in their entirety;

10 IT IS HEREBY FURTHER ORDERED that Metro shall immediately begin producing
11 public records responsive to the public records request at issue in the Petitions;

12 IT IS HEREBY FURTHER ORDERED that Metro shall produce the public records on a
13 rolling basis, as public records are appropriately redacted and available for disclosure, without
14 unnecessary delay;

15 IT IS HEREBY FURTHER ORDERED that Metro shall exercise the utmost good faith
16 in producing the public records on a timely basis;

17 IT IS HEREBY FURTHER ORDERED that, if Metro comes across any individual public
18 record that may be highly confidential or where redactions may not be practicable, Metro shall
19 meet and confer with Petitioners in an attempt to resolve the issue. The Court cautions that this
20 right to potentially seek a protective order is to be used very sparingly;

21 IT IS HEREBY FURTHER ORDERED that any protective order Metro may seek is not
22 to be used to withhold entire groups of public records;

23 IT IS HEREBY FURTHER ORDERED that the filing of any subsequent motion for a
24 protective order shall not cause any delay in the production of all other requested public records;

25 IT IS HEREBY FURTHER ORDERED that the Court will hold a Status Conference in
26 30 days to review a report, to be given by the Parties, covering what has and has not been
27 produced pursuant to this Order. The Status Conference shall be held on March 7, 2018 at 9:00
28 a.m.;

1 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Parties shall
2 have an opportunity to explain whether there has been good faith communication regarding the
3 production;

4 IT IS HEREBY FURTHER ORDERED that at the Status Conference, the Court shall
5 hear any objections with respect to the delay in disclosure or the need for more time for Metro to
6 produce;

7 IT IS HEREBY FURTHER ORDERED that acceptable redactions shall include
8 individual names (other than government officials), addresses, phone numbers, social security
9 numbers, descriptions of individuals, and social media data for all individuals. To the extent that
10 any public record produced might specifically identify the names of the individuals or the
11 description of the individuals (or any other personal information), that information shall be
12 redacted; and

13 IT IS HEREBY FURTHER ORDERED that Metro shall make any and all public records
14 subject to this proceeding available at Metro's office for review by Petitioners, particularly
15 where production of those public records is either too burdensome or impossible otherwise.

16 IT IS HEREBY FURTHERED ORDERED that the Court is not waiving the payment
17 obligation and Petitioners shall pay the fees associated with the production of the public records
18 in accordance with NRS Chapter 239.

19 ...

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

27 ...

28 ...

1 IT IS HEREBY FURTHER ORDERED that the Parties shall submit supplemental
2 briefing regarding the fee amount to be charged with respect to the production of the public
3 records.

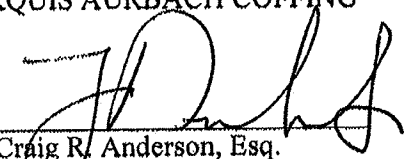
4 IT IS SO ORDERED.

5 DATED this 27th day of February, 2018.

6
7 
8 DISTRICT COURT JUDGE

9 Respectfully Submitted By: 

10 MARQUIS AURBACH COFFING

11
12 By: 

13 Craig R. Anderson, Esq.

14 Nevada Bar No. 6882

15 Nick D. Crosby, Esq.

16 Nevada Bar No. 8996

17 Jackie V. Nichols, Esq.

18 Nevada Bar No. 14246

19 10001 Park Run Drive

20 Las Vegas, Nevada 89145

21 Attorneys for Respondent Las Vegas Metropolitan Police Department
22
23
24
25
26
27
28

EXHIBIT B



1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 **AMERICAN BROADCASTING COMPANIES,**
7 **INC., et al.,**

8 **Plaintiffs,**

9 **vs.**

10 **LAS VEGAS METROPOLITAN POLICE**
11 **DEPARTMENT, et al.,**

12 **Defendants.**

Case No.: A-17-764030-W
Dept. No.: II

Date: March 7, 2018
Time: 9:00 a.m.

**ORDER REGARDING PUBLIC
RECORDS REQUEST**

13 **I. INTRODUCTION**

14 This action involves Petitioners' request for records from the Las Vegas Metropolitan
15 Police Department ("Metro") pursuant to Nevada's Public Records Act. Petitioners include
16 the Las Vegas Review Journal, American Broadcasting Companies, Associated Press, Cable
17 News Network, Inc., New York Times, and other press (hereinafter referred to as the
18 "Media"). This Court already held that Metro must produce several categories of records,
19 including body cam recordings, dash cam recordings, CCTV recordings, 911 calls, dispatch
20 logs, evidence logs, interview reports, and search warrant data.

21 The Court set the hearing conducted on Wednesday, March 7, 2018, to determine the
22 fee that Metro could charge for the gathering and copying of the documents and audio/visual
23 data. Having considered the briefs and arguments of counsel, the Court hereby interprets the
24 Nevada Public Records Act and determines the fees that Metro may charge.

25 As a prelude to the findings that follow, this Court holds Metro and its individual
26 officers in very high esteem; understands the dangerous encounters that Metro officers face
27 every day; and regrets the limited budget that has been given to Metro to not only protect the
28 health, welfare, and safety of the public, but to respond to massive requests for production of

1 documents. Nevertheless, the purview of the responsibility of this Court is only to apply the
2 law as given to the facts at hand, leaving it to others to determine whether the law should be
3 changed.

4 Explained below, with one exception, Metro is not allowed to charge the Media for
5 staff time to get the records ready for copying. Accordingly, the Court DENIES Metro's
6 demand for its range of fees from \$233,750 to \$458,159 to comply with the records request.
7 Metro must reevaluate and report back to this Court with the proper fee that it proposes to
8 charge the Media, consistent with this Order. Despite the need for such further reevaluation,
9 Metro must immediately begin complying with the Media's request.

10 II. PURPOSE OF THE PUBLIC RECORDS ACT

11 This Court, in reaching its interpretation of the relevant portions of the Nevada Public
12 Records Act, first searched the Constitutional underpinnings of the Act. The Act does not
13 have any direct basis in either the United States or Nevada Constitutions. As stated by Potter
14 Stewart, former Associate Justice of the United States Supreme Court, the public's right to
15 access public records only indirectly springs from the Constitution:

16 There is no constitutional right to have access to particular
17 government information, or to require openness from the
18 bureaucracy. . . . The public's interest in knowing about its
19 government is protected by the guarantee of a Free Press, but the
20 protection is indirect. The Constitution itself is neither a Freedom
21 of Information Act, nor an Official Secrets Act.

22 Potter Stewart, *Or of the Press*, 26 Hastings LJ 631, 636 (1975).

23 Although there is no direct Constitutional requirement of the government to provide
24 the public with easy access to public records, the public's right to know is essential to our
25 democracy. In the Preamble to Nevada's Public Records Act, the Nevada Legislature
26 declared: "The Legislature hereby finds and declares that: 1. the purpose of this chapter is to
27 foster democratic principles by providing members of the public with access to inspect and
28 copy public books and records to the extent permitted by law; [and that] 2. [t]he provisions of
this chapter must be construed liberally to carry out this important purpose." NRS 239.001.

...

1 The Nevada Supreme Court has held that the purpose of the Nevada Public Records
2 Act is to "ensure the accountability of the government to the public by facilitating public
3 access to vital information about governmental activities." *DR Partners v. Board of County*
4 *Com'rs. Of Clark County*, 116 Nev, 616, 621 (2000). *See also John Doe Agency v. John Doe*
5 *Corp.*, 493 U.S. 146, 152 (1989) ("The basic purpose of FOIA is to ensure an informed
6 citizenry, vital to the functioning of a democratic society, needed to check against corruption
7 and to hold the governors accountable to the governed."). Although the Media has not
8 accused Metro of wrongdoing, and neither has the Court in even the slightest manner, there
9 need not be any corruption or unaccountability as a precondition to production of documents.
10 *See National Archives and Records Admin. v. Favish*, 541 U.S. 157, 172 (2004) ("[C]itizens
11 should not be required to explain why they seek the information. A party requesting the
12 information needs no preconceived idea of the uses of data might serve. The information
13 belongs to the citizen to do with as they choose.").

14 Given the strong public policy in favor of production, the Media must never be
15 compelled to pay an exorbitant fee to obtain records, even if the Media elects not to give any
16 reason for the request. An excessive fee is the antithesis to government accountability.

17 The Public Records Act is undoubtedly a culmination of political thought that the
18 Media best performs its watchdog function when it has ease of access to government records.
19 The government cannot frustrate the Media's efforts to obtain information on behalf of the
20 public by charging exorbitant fees.

21 **III. THE PARTIES' DIFFERING VIEWS**

22 The Media contends that Metro cannot charge more than 50 cents per page of
23 documents. The Media also contends that Metro must provide the electronic records (such as
24 the body cam data, 911 calls, and the dispatch logs) for free. In contrast, Metro contends that
25 the Media's request requires an extraordinary use of personnel and technological resources,
26 thereby entitling Metro to charge its actual cost to compile and copy the requested documents
27 and data. Both sides are wrong.

28 ...

1 Metro tries to get to Nevada's legislative history to reveal tidbits of words that it might
2 support its position to charge the Media for its staff time to gather the requested documents.
3 To do so, Metro claims the Act is ambiguous. Metro sees an ambiguity because the first part
4 of NRS 239.055 permits Metro to charge an extra 50 cents per page fee if the request requires
5 Metro to use extraordinary services. Metro then sees an inconsistency because the second part
6 of NRS 239.055 restricts Metro to charging no more than its actual costs for the extraordinary
7 use.

8 The various rules of statutory construction do not support Metro's argument.

9 First, this Court must interpret the Act in a manner that avoids an absurd or
10 unreasonable result. *Leven v. Frye*, 123 Nev. 399 (2007). It would be both absurd and
11 unreasonable to think the Legislature in one breath said the government could charge 50 cents
12 per page and then in the very next breath ignore the "50 cent" rule in favor of a much more
13 expansive "actual cost" rule.

14 Second, the Court must examine the context of the Act by "considering the reason or
15 spirit of the law or the causes which induced the legislation to enact it." *Welfare Div. of State*
16 *Dept. of Health, Welfare and Rehabilitation v. Washoe County Welfare Dept.*, 88 Nev. 635,
17 637 (1972). The evident purpose of the legislation in enacting the Public Records Act was to
18 limit fees to insure the public's ease of access to government documents – the people's
19 documents. Metro's interpretation gives an unreasonably expansive "actual cost" entitlement
20 to the government entity in responding to records request. This interpretation is plainly
21 inconsistent with the Legislators' expressed intent in the preamble to the Act. NRS 239.001.

22 Third, "this [C]ourt must give [the Act's] terms their plain meaning, considering its
23 provisions as a whole, so as to read them in a way that would not render words or phrases
24 superfluous or make a provision nugatory." *Arguello v. Sunset Station*, 127 Nev. 365, 370
25 (2011). Metro's interpretation would render the "50 cent" rule nugatory, when a more
26 reasonable interpretation could be found by reading the Act as a whole, giving reasonable
27 meaning to all terms.

28 . . .

1 “When a statute is clear on its face, [the Court] will not look beyond the statute’s plain
2 language.” *Washoe Medical Center v. Second Judicial District Ct.*, 122 Nev. 1298, 1303
3 (2006). Given the clarity of the Act, it is not the role or responsibility of this Court to
4 consider the propriety of the Act as adopted by the Nevada Legislature; it is not the role or
5 responsibility of this Court to insure the Nevada Legislature properly considered and weighed
6 the public policies implicated by the Act; it is not the role or responsibility of this Court to
7 consider the impact the Act might have on the resources of Metro. The Court must presume
8 that the Nevada Legislature already did all of this. All that remains for this Court is to
9 correctly apply the Act as written to the specific facts of this case.

10 Below the Court has grouped the various categories of records based on the various
11 rules that apply to each group.

12 **IV. THE “50 CENT” RULE AS APPLIED TO EVIDENCE LOGS AND**
13 **INTERVIEW REPORTS**

14 By referencing a per “page” fee, the Nevada Legislature clearly expressed its intent
15 that NRC 239.055 applies only to hard copies of documents, and pages of documents that are
16 stored electronically. This provision encompassed the evidence logs and the interview
17 reports.

18 The starting point in determining fees for documents such as evidence logs and
19 interview reports is NRS 239.052. This provision permits Metro to charge its “actual cost”
20 “for providing a copy,” “except as otherwise provided [in other sections of the Act].” Metro
21 and the Media both agree that these words allow the government to bill for the actual cost of
22 making duplicates of the records, and the cost of the medium used (*i.e.* DVD, CD, flash drive,
23 hard drive, etc.). The Court agrees. The Nevada Legislature already showed that it
24 recognized the difference between – on the one hand: the cost of merely duplicating the
25 records and providing them on some form of medium (hereinafter the “COPY COSTS”), and
26 on the other hand: the costs for staff to gather the documents, maintain and update the data
27 system to facilitate the production, consultations necessary to comply with the request, and
28 quality control (hereinafter referenced as the “PRE-COPY PREPARATIONS”).

1 As already stated above, it bears repeating here that NRS 239.055 allows the
2 government to charge an additional amount above and beyond the "COPY COSTS" if the
3 project required the government entity to incur "extraordinary" use of personnel and
4 technological resources. It says: "[T]he government entity may, in addition to any other fee
5 authorized pursuant to this chapter, charge a fee not to exceed 50 cents per page for such
6 extraordinary use." The provision goes on to say that the government cannot bill for more
7 than its actual costs for extraordinary use of staff. In sum, in the event of extraordinary use,
8 Metro can charge for its "COPY COSTS," plus its "PRE-COPY PREPARATIONS," not to
9 exceed 50 cents per page. This part of the Act could not be clearer.

10 The court finds that the Media's request here does indeed require Metro to incur
11 extraordinary use of staff time, thereby implementing the "50 cent" rule for documents.
12 Petitioner has requested a massive amount of documents and information. Petitioner has
13 requested several different categories of documents. Petitioners' request will require several
14 Metro officers, technological personnel, equipment and supervisors. Petitioners' request will
15 require Metro to conduct extensive redactions of confidential and private data. Petitioners'
16 request will require an effort by Metro over a period of at least six (6) months. Finally,
17 Petitioners' request might interfere with Metro's ability to protect the health, welfare, and
18 safety of the public. For all these reasons, the Court finds that the Media's request will
19 involve "extraordinary use," and triggers the 50 cents per page additional allowance.

20 Recognizing that Metro will incur "extraordinary use" of staff and resources, it is easy
21 to calculate the rate that Metro may charge. In its published list of rates, Metro stated that its
22 basic "COPY COSTS" are 31 cents per page.¹ Since the work is extraordinary here, Metro is
23 entitled to charge an extra 50 cents, for a total charge of 81 cents to comply with the Media's
24 obligation to turnover copies of the evidence logs and interview reports.²

25 ¹ At the next hearing, Metro must provide proof that its 31 cents per page charge is equal
26 to or less than its actual costs.

27 ² In giving Metro the full 50 cents, the Court makes the assumption that Metro's
28 extraordinary use of staff would exceed 50 cents when amortized over the total number of
copies to be made.

1 **V. "GEOGRAPHIC INFORMATION SERVICES" RULE AS APPLIED TO**
2 **DISPATCH LOGS**

3 NRS 239.054 carves out one exception which permits Metro to charge the "pre-copy
4 preparations." This exception applies to data that is part of a "geographic information
5 systems." A "geographic information system" is "a system of hardware, software and data
6 files on which spatially oriented geographical information is digitally collected, stored,
7 managed, manipulated, analyzed and displayed." Metro concedes that only the dispatch logs
8 fall into this category.

9 The Nevada Legislature in NRS 239.054 made it clear that the government may
10 charge for the pre-copy preparations (limited to actual costs) plus the actual COPY COSTS,
11 and there is no 50 cent limit.

12 **VI. "FEE FOR PROVIDING" RULE AS APPLIED TO BODY CAM, AND 911**
13 **CALLS**

14 As for the body cam recordings, and 911 calls, these recordings are electronic forms of
15 data not capable of being printed out on a "per page" basis. As previously stated, NRS
16 239.052 permits the government to charge only the COPY COSTS, capped by actual costs.
17 This rule applies to electronic data, and is not subject to the 50 cent cap.

18 There is nothing in the Act that permits Metro to bill the Media for pre-copy
19 preparations. NRS 239.054 applies to geographic information systems – not applicable to
20 body cam data or 911 calls. NRS 239.055 applies to documents – not electronic records that
21 are not susceptible to being printed out on a page by page basis. There is simply nothing in the
22 Act other than NRS 239.052 that applies to body cam recordings or 911 calls. The Nevada
23 Legislature has spoken quite clearly on this issue. The Court cannot go beyond the language
24 and recreate in Metro an entitlement to bill for the staff and other resources needed as part of
25 the pre-copy preparations.

26 Metro sought to bill the Media to compile and produce 748 hours of body cam
27 recordings. Metro argued that it needs to assign personnel to spend from 4675 to 9163 hours
28 to perform initial reviews of the data, to redact confidential and privileged portions of the

1 data, and to perform quality control, all at a rate of \$50 per hour. This translates to a fee of
2 \$233,750 to \$458,159. Nevada law does not permit Metro to charge the Media these amounts
3 to compile the body cam data. Metro is limited to charging the Media only its actual cost to
4 make duplications of the recordings, and the actual cost of the medium to which the
5 recordings are transferred.

6 VII. SUMMARY OF FEES ALLOWED

7 In sum, Metro is allowed by law to charge the following fees, but no greater, to
8 properly respond the Media's request pursuant to the public records request:

9 **Evidence Logs, and Interview Reports:** COPY COSTS of 31 cents per page, plus an
10 additional 50 cents for extraordinary services, for a total of 81 cents.

11 **Body Cams, and 911 Calls:** COPY COSTS – meaning only the actual
12 costs to reproduce the records onto the
13 medium for transfer, and the cost of such
medium (such as DVD, CD, flash drive, hard
drive, etc.).

14 **Dispatch Logs:** PRE-COPY PREPARATIONS, meaning
15 actual cost to gather, discuss, supervise and
16 insure quality control, as part of the effort to
comply with the Media's request.

17 The Court grants Metro the minimum period of six months to produce all of the
18 requested documents. Metro must begin its production of records to the Media within three
19 (3) business days from the date of this Order. Metro must make a rolling production, meaning
20 groups of documents must be produced as they become available. Metro must provide the
21 Media with an estimate of the allowable fees that are charged to the Media, consistent with
22 this Order, within three (3) business days from the date of this Order. The Media may pay
23 this amount in six monthly equal installments. The Media must pay each month at least one
24 sixth of the anticipated total charge at the beginning of each month of production.

25 ...

26 ...

27 ...

28

1 The Court hereby sets a further Status Check for March 28, 2018 at 10:00 a.m. to
2 handle any lingering issues, to address any party's request for a modification of this Order,
3 and requests for any clarification.

4 **IT IS SO ORDERED.**

5 Dated this 9th day of March, 2018.

6
7 
8 RICHARD F. SCOTTI
DISTRICT COURT JUDGE

9
10 **CERTIFICATE OF SERVICE**

11 I hereby certify that on or about the date signed, a copy of this Order was electronically
12 served and/or placed in the attorney's folder maintained by the Clerk of the Court and/or
13 transmitted via facsimile and/or mailed, postage prepaid, by United States mail to the proper
14 parties as follows:

15 Joel E. Tasca, Esq.
16 Justin A. Shiroff, Esq.
BALLARD SPAHR
17 *Counsel for Petitioner*

18 Margaret A. McLetchie, Esq.
19 Aline M. Shell, Esq.
MCLETCHIE SHELL LLC
Counsel for Petitioner LVRJ

20 Craig R. Anderson, Esq.
21 Nick D. Crosby, Esq.
22 Jackie V. Nichols, Esq.
MARQUIS AURBACH COFFING
Counsel for Respondent LVMPD

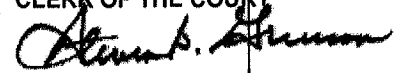
23
24 */s/ Melody Howard*

25
26 Melody Howard
Judicial Executive Assistant

27
28
Richard F. Scotti
District Judge

Department Two
Las Vegas, NV 89155

EXHIBIT 10



OPPM

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Counsel for American Broadcasting Companies, Inc.,

The Associated Press, Cable News Network, Inc.,

Chesapeake Media I, LLC, d/b/a KSNV-TV, Los Angeles

Times Communications, LLC, The New York Times Company,

and WP Company LLC d/b/a The Washington Post

DISTRICT COURT

CLARK COUNTY NEVADA

AMERICAN BROADCASTING
COMPANIES, INC.; THE ASSOCIATED
PRESS; CABLE NEWS NETWORK,
INC.; CHESAPEAKE MEDIA I, LLC,
D/B/A KSNV-TV; LOS ANGELES
TIMES COMMUNICATIONS, LLC; THE
NEW YORK TIMES COMPANY; AND
WP COMPANY LLC D/B/A THE
WASHINGTON POST,

Petitioners,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

Case No.: A-17-764030-W

Consolidated Case No.: A-17-764169-W

Dept. No.: XXIII

**JOINT OPPOSITION TO LAS
VEGAS METROPOLITAN POLICE
DEPARTMENT'S MOTION FOR
STAY PENDING RESOLUTION ON
APPEAL ON AN ORDER
SHORTENING TIME**

Hearing Date: April 10, 2018

Hearing Time: 9:30 a.m.

LAS VEGAS REVIEW-JOURNAL,

Petitioner,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT,

Respondent.

COME NOW American Broadcasting Companies, Inc. ("ABC"), The Associated Press ("AP"), Cable News Network, Inc. ("CNN"), Chesapeake Media I, LLC, d/b/a KSNV-TV ("KSNV-TV"), Los Angeles Times Communications, LLC ("*Los Angeles Times*"), The New York Times Company ("*The New York Times*"), Scripps Broadcasting Holdings, LLC d/b/a KTNV-TV ("KTNV-TV") and WP Company LLC d/b/a The Washington Post ("*Washington Post*"); and the Las Vegas Review-Journal ("LVRJ"), and collectively, "Petitioners", by and through their undersigned counsel, and hereby submit this Joint Opposition to the April 3, 2018, Motion for Stay Pending Resolution on Appeal on an Order Shortening Time (the "Motion") filed by the Las Vegas Metropolitan Police Department ("Metro") on an Order Shortening Time ("OST"). This Opposition is made and based on the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral argument the Court may consider on the Motion.

DATED this 9th day of April, 2018.

/s/ Margaret A. McLetchie

MARGARET A MCLEATCHIE, Nevada Bar No. 10931

ALINA M. SHELL, Nevada Bar No. 11711

MCLEATCHIE SHELL LLC

Counsel for Petitioner, Las Vegas Review-Journal

/s/ Justin A. Shiroff

JOEL E. TASCA, Nevada Bar No. 14124

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BALLARD SPAHR LLP

Counsel for American Broadcasting Companies, Inc., The Associated Press, Cable News Network, Inc., Chesapeake Media I, LLC, d/b/a KSNV-TV, Los Angeles Times Communications, LLC, The New York Times Company, and WP Company LLC d/b/a The Washington Post

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Over six months have passed since 1 October and Metro has yet to provide a single public record to the media entities who petitioned this Court for relief under the Nevada Public Records Act (the “NPRA,” codified at Nev. Rev. Stat. § 239.001 et seq.).¹ The NPRA recognizes the high importance of access to records and mandates both that governmental entities respond to requests quickly and that court proceedings addressing NPRA requests be expedited. Yet Metro has done nothing but delay this Court’s resolution of this matter. This Court should deny Metro’s most recent attempt to delay and confuse—its Motion for Stay. Metro’s cursory Motion fails to satisfy the legal standard that would allow this Court to issue a stay. First, production of public records to the public that owns them is not “harm.” Second, much of the purported harm Metro complains about is limited to costs—and monetary harm is not irreparable harm that can justify a stay. In contrast, the NPRA recognizes that disclosure of public records is necessary to effectuate the democratic principles at the very heart of our system of government—therefore, further delays would cause Petitioners and the general public grave and irreparable harm. In a case like this, the news media should not have to wait potentially years while governmental entities evade public scrutiny by exploiting the legal system to delay compliance with the NPRA. Indeed, a stay is particularly inappropriate in light of the fact that the NPRA requires that legal actions seeking compliance with its terms be expedited and makes all public records presumptively available to the public. Granting a stay would incentivize Metro and other government entities to delay, play hide the ball, and resist compliance with the NPRA. This of course runs contrary to the NPRA’s purpose: supporting access to public records.

///

///

¹ In contrast, the 911 calls pertaining to the more recent Parkland shooting were released a month ago, on March 8. *See, e.g.*, <https://www.apnews.com/b688690068284e9294a2ab7d4e9f9bd3>.

1 This Court can also reject the Motion on more basic procedural grounds. This Court
2 ordered Metro to provide more information about what it is withholding and set briefing on
3 its Metro's Motion for Reconsideration, which included a Request for Stay. Importantly, this
4 Court put a temporary stay in place while the Motion for Reconsideration and Request for
5 Stay were briefed and decided. Yet, in flagrant violation of this Court's Order, Metro refused
6 to follow this Court's order to submit a supplemental briefing and to finally tell Petitioners
7 what records exist. Instead, it appealed prematurely (and then filed this new Motion for Stay,
8 on an OST). As seems to be Metro's design, the Notice of Appeal creates a procedural
9 quagmire that continues to delay resolution and the inevitable production of public records.²
10 This Court should not reward this most recent example of Metro's persistent efforts to delay
11 and complicate this litigation with its gamesmanship.

12 Enough is enough. As the Court recognized in its prior orders, transparency is
13 critically important in the context of a mass tragedy. The public has a right to access
14 information about 1 October. Metro's press conferences and press releases are appreciated
15 but not enough. Under the NPRA, the public has a right to look at actual public records and
16 assess facts and information for itself. For these reasons, the Stay must be denied. Further,
17 this Court can and should hold Metro in contempt for failing to comply with its most recent
18 order.

19 II. FACTUAL AND PROCEDURAL BACKGROUND

20 While Metro recently filed a premature notice of appeal (and followed it with the
21 Motion for a Stay on an OST at issue here), Metro did not decide to appeal the Court's order
22 requiring disclosure of the records at issue (the "Disclosure Order") until after the Court
23 issued an order on costs (the "Costs Order") it did not like. Then, it filed its baseless Motion
24 for Reconsideration—a transparent effort to get another bite at the apple. Then, as detailed
25 in the Limited Joint Opposition to the Motion for Reconsideration, Metro gamed the system
26 to obtain re-assignment—another transparent (and baseless) effort to relitigate issues it had

27 ² As a practical matter, the Nevada Supreme Court is extremely unlikely to take up the appeal
28 until the pending Motion is final. *See* Nev. R. App. P. 4(a)(6).

lost. Then, after a status check held after judicial re-assignment where it apparently sensed that its Motion for Reconsideration would not succeed, Metro decided to comport with this Court's order that it supplement its Motion and provide a log of withheld records. Instead, Metro filed a premature notice of appeal. Metro now seeks a stay, on an OST.³

These tactics are just the most recent examples of the efforts Metro has taken to delay and pretend that it is not bound by the NPRA since the very beginning. The delay tactics began back in early October when Metro received a number of requests from Petitioners pursuant to the NPRA seeking answers about 1 October. At that stage, as it does now, Metro ignored the clear mandates of the NPRA. It failed to take the steps a governmental entity is mandated to take within five (5) days of an NPRA request: produce records, cite specific authority to justify non-disclosure, indicate that responsive records do not exist or that another entity has the records if that is the case, or, if it intends to produce records, provide a date certain by which it will produce records. Nev. Rev. Stat. § 239.0107(a) and (b). This Court recognized this failure, but excused it because of the unique circumstances of 1 October. However, now six months have passed and Metro has *never* done what it was legally bound to do within five (5) days of a request.⁴

Just as it has failed to provide specific information since it received requests, Metro fails to explain in its Motion how disclosure of records from any of the categories sought (let

³ OST demands the immediate attention of this Court and the Petitioners to address a non-emergency of Metro's own making. Indeed, a briefing schedule on the now-abandoned Motion for Reconsideration (which included a request for a stay), was set by this Court, *along with a temporary stay* pending resolution of that motion. Notably, Metro also failed to give Petitioners any advance notice of the OST. While at a hearing in another matter, Petitioners' counsel asked Metro's counsel about the status in this case and learned, for the first time, that the then-proposed OST had been submitted to chambers. Petitioners' counsel expressed concern about not having received as much notice as possible, and asked for a copy of what had been submitted. Metro's counsel agreed to do so but never followed through. (See Declaration of Margaret A. McLetchie, ¶ 5.)

⁴ This Court ordered Metro to supplement its Motion for Reconsideration with an evidentiary log, and Metro refused to do so. And it was only recently that Metro bothered to even inform Petitioners regarding which responsive records exist within its custody and control. (See Exhibit 1; *see also* Declaration of Margaret A. McLetchie ¶ 7.)

alone all of them) will cause irreparable harm. Metro makes *no argument* that is likely to succeed on the merits; instead, in boilerplate fashion, asserts that it raises “a serious legal question” on appeal. If a governmental entity is entitled to a stay based on the facts of this case and such argument, it would disincentivize compliance with court orders requiring production under the NPRA and encourage governmental entities to disregard Court orders and appeal every opportunity just to gain the benefit of a delay. In light of the importance of speedy access to records enshrined in the NPRA, this result is absurd and untenable.

III. ARGUMENT

A. Legal Standard

This Court must consider four factors in deciding whether to issue a stay: (1) “whether the object of the appeal will be defeated if the stay is denied;” (2) “whether appellant will suffer irreparable or serious injury if the stay is denied;” (3) “whether respondent will suffer irreparable or serious injury if the stay is granted;” and (4) “whether appellant is likely to prevail on the merits in the appeal.” Nev. R. App. P. 8(c); *accord Hansen v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000); *accord Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004). In addition, as the United States Supreme Court has held, courts must also consider “where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (citations omitted); *accord NML Capital, Ltd. v. Republic of Argentina*, No. 2:14-CV-492-RFB-VCF, 2015 WL 3489684, at *4 (D. Nev. June 3, 2015).

The Nevada Supreme Court has “not indicated that any one factor carries more weight than the others,” and instead “recognizes that if one or two factors are especially strong, they may counterbalance other weak factors. *Mikohn Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38 (citing *Hansen*, 116 Nev. 650, 6 P.3d 982 (2000)). The four factors of Nev. R. App. P. 8(c) weigh against a stay. Moreover, the NPRA and the case law interpreting its provisions demonstrate that the public interest lies with disclosure of the public records Metro has fought tooth and nail to withhold.

///

1 **B. The NRAP 8(c) Factors Weigh Against a Stay.**

2 **1. Metro Will Not Suffer Serious or Irreparable Injury if a Stay is**
3 **Denied.**

4 Metro's main concern—the gravamen of its Motion to Stay—is that it will not get
5 the full payment it wants if it produces records. (Motion, p. 7 (“Very simply, if the status quo
6 is not maintained, Metro will be compelled to begin production of the public records no later
7 than April 27, 2018 without appropriate payment for the extraordinary use of its personnel.”)
8 Thus, Metro speculates that it may prevail on its appeal of the Costs Order and have lost
9 money—or not obtained as much money as it wants right away. This argument fails. First,
10 the mere possibility of irreparable injury is not sufficient to warrant a stay. *See Nken*, 556
11 U.S. at 435 (citing *Winter v. Natural Res. Def. Council Inc.*, 555 U.S. 7, 22 (2008)); *accord*
12 *In re R & S St. Rose Lenders, LLC*, No. 2:17-CV-01322-MMD, 2017 WL 2405368, at *3 (D.
13 Nev. June 2, 2017).

14 Second, monetary harm does not justify a stay or other injunctive relief. *Excellence*
15 *Cmty. Mgmt. v. Gilmore*, 131 Nev. Adv. Op. 38, 351 P.3d 720, 725 (2015) (finding that the
16 district court did not abuse its discretion when a party failed to show that it would
17 suffer irreparable harm for which compensatory damages were not an adequate remedy if the
18 district court did not enter a preliminary injunction); *In re Capability Ranch, LLC*, No. 2:13-
19 CV-1812 JCM, 2013 WL 6058198, at *3 (D. Nev. Nov. 15, 2013) (holding that forcing losing
20 party to pay attorney's fees does not constitute irreparable harm); *see also Orquiza v.*
21 *Walldesign, Inc.*, No. 2:11-CV-1374 JCM CWH, 2013 WL 4039409, at *2 (D. Nev. Aug. 6,
22 2013) (“Monetary damages alone do not amount to irreparable harm”); *Taddeo v. Am. Invsco*
23 *Corp.*, No. 2:12-CV-01110 APG NJK, 2014 WL 12708859, at *1 (D. Nev. Sept. 19, 2014)
24 (“simple monetary damages generally are not considered to be irreparable harm”); *see also*
25 *Town Ctr. Drive & 215, LLC v. Bank of Am., N.A.*, No. 60672, 2014 WL 3764503, at *3
26 (Nev. July 29, 2014) (finding no irreparable harm when injunction-seeking plaintiff would
27 only be entitled to monetary damages). The Nevada Supreme Court has also held that
28 “litigation costs, even if potentially substantial, are not irreparable harm.” *Mikohn Gaming*
Corp., 120 Nev. at 253, 89 P.3d at 39 (citing *Hansen*, 116 Nev. at 658, 6 P.3d at 986-7).

1 Metro being compensated less than it wants is the exact opposite of an “irreparable harm,”
2 thus this factor weighs in favor of denying a stay.

3 Metro also vaguely asserts that disclosure of the records at issue is irreparable harm.
4 Just as it did not support its claims in its Response to the petition, Metro fails to explain how
5 this harm would arise, or which interests would actually be harmed and why. It notably has
6 refused to comply with this Court’s order to identify and explain which records are being
7 withheld. Further, Metro’s arguments ignore the NPRA’s mandate that a governmental entity
8 cannot resist disclosure of public records which contain confidential information “if the
9 governmental entity can redact, delete, conceal or separate the confidential information from
10 the information included in the public book or record that is not otherwise confidential.” Nev.
11 Rev. Stat. § 239.010(3).

12 Finally, it is of note that Metro’s own obstructionist behavior and delay tactics
13 created the alleged emergency it complains about in its Motion. This self-imposed false
14 emergency cannot now be used as grounds for the entry of a stay on an OST.

15 **2. The Petitioners and the Public Will Suffer Serious Injury if a**
16 **Stay is Granted.**

17 As discussed above and throughout the course of this case, the legislative intent
18 underpinning the NPRA is to foster democratic principles by ensuring easy and expeditious
19 access to public records. Nev. Rev. Stat. § 239.001(1); *Reno Newspapers, Inc. v. Gibbons*,
20 127 Nev. 873, 878, 266 P.3d 623, 626 (2011) (holding that “the provisions of the NPRA are
21 designed to promote government transparency and accountability”). Staying the Court’s July
22 Order would run contrary to these principles, and create a perverse incentive for Metro and
23 other governmental agencies to engage in litigation tactics which would thwart this important
24 goal of the NPRA. For the past six months, Metro has resisted disclosing public records

25 The legislative interest in swift disclosure is woven throughout the NPRA. For
26 example, Nev. Rev. Stat. § 239.0107(1) mandates that, by not later than the end of the fifth
27 business day after receiving a records request, a governmental entity must either (1) make
28 the records available; (2) if they entity does not have custody of the requested records, notify
the requester of that fact and direct them to the appropriate government entity; (3) if the

1 records are not available by the end of the fifth business day, provide notice of that fact and
2 a date when the records will be available; or (4) if the records or any part of the records are
3 confidential, provide the requestor with notice of that fact and a citation to the statute or law
4 making the records confidential. Nev. Rev. Stat. § 239.0107(1)(a)-(d).

5 In addition to this timely notification and disclosure scheme, the NPRA specifically
6 provides for expedited court consideration of a governmental entity's denial of a records
7 request. *See* Nev. Rev. Stat. § 239.011(2) (mandating that a court give an application for
8 public records "priority over other civil matters").) Thus, the NPRA is designed to provide
9 quick access to withheld public records, not to reward non-compliance, hiding of
10 information, and delay.

11 As the procedural history above makes plain, the NPRA's important legislative goal
12 of permitting swift access to public records has been repeatedly thwarted by Metro.

13 **3. The Object of the Appeal Will Not Be Defeated if a Stay Is Denied.**

14 With regard to the Cost Order, which appears to be much of Metro's focus, it is not
15 properly before the Supreme Court, and just as monetary harm is not irreparable, producing
16 records would not moot it appeal of that order. As the Nevada Supreme Court has explained
17 "payment of a judgment only waives the right to appeal or renders the matter moot when the
18 payment is intended to compromise or settle the matter." *Wheeler Springs Plaza, LLC v.*
19 *Beemon*, 119 Nev. 260, 265, 71 P.3d 1258, 1261 (2003); *accord Jones v. McDaniel*, 717 F.3d
20 1062, 1069 (9th Cir. 2013). Under this precedent, compliance with the Court's Order would
21 not moot Metro's appeal.

22 **4. Metro Is Very Unlikely to Prevail in This Case, and Has Not**
23 **Supported Its Motion.**

24 The Motion to Stay is premature and legally insufficient. That Metro does not like
25 the terms of the NPRA does not mean that there is a serious legal issue at play. Even viewing
26 the totality of all briefing in this matter, up to and including the Motion for Reconsideration,
27 Metro has utterly failed to present any concrete evidence of why the records should not be
28 produced.

///

1 Metro fails to even try to articulate that it is likely to succeed. (Motion to Stay, p.
2 8:10-11.) Instead, in a mere paragraph, without actual analysis, Metro baldly asserts that it
3 raises a significant legal issue as to whether its “interest in non-disclosure outweighs the
4 public’s interest in disclosure.”⁵

5 The law surrounding the NPRA is in fact well-settled—in particular with the regard
6 to the burden Metro bears in justifying nondisclosure and, thus, ultimately prevailing in this
7 case. In accordance with the presumption of openness and “emphasis on disclosure”⁶ that
8 underpins the NPRA, both the Act itself and the Nevada Supreme Court place a high burden
9 on a governmental entity to justify disclosure (and have done so for decades).

10 First, the law requires that, if a governmental entity seeks to withhold or redact a
11 public record in its control it must prove by a **preponderance of the evidence** that the record
12 or portion thereof that it seeks to redact is confidential. *See* Nev. Rev. Stat. § 239.0113; *see*
13 *also, e.g., Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011);
14 *accord Nevada Policy Research Inst., Inc. v. Clark Cty. Sch. Dist.*, No. 64040, 2015 WL
15 3489473, at *2 (D. Nev. May 29, 2015). As a general matter, “[i]t is well settled that
16 privileges, whether creatures of statute or the common law, should be interpreted and applied
17 narrowly.” *DR Partners v. Bd. of Cty. Comm’rs of Clark Cty.*, 116 Nev. 616, 621, 6 P.3d
18 465, 468 (2000) (citing *Ashokan v. State, Dept. of Ins.*, 109 Nev. 662, 668, 856 P.2d 244, 247
19 (1993)). This is especially so in the public records context: pursuant to the mandates of the
20 NPRA, any restriction on disclosure “must be construed narrowly.” Nev. Rev. Stat. §
21 239.001(3).

22 Second, after establishing the existence of the privilege it asserts and applying it
23 narrowly, unless the privilege is absolute, the governmental entity bears the burden of
24 establishing that the interest in withholding documents clearly “clearly outweighs the

25 _____
26 ⁵ The Motion to Stay the Costs order fails as a matter of law because there is no irreparable
harm.

27 ⁶ *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 882, 266 P.3d 623, 629 (2011) (“[T]he
28 provisions of the NPRA place an unmistakable emphasis on disclosure”).

1 public's interest in access." *Reno Newspapers, Inc. v. Gibbons*, 127 Nev. 873, 880, 266 P.3d
2 623, 628 (2011). This is so because "the provisions of the NPRA place an unmistakable
3 emphasis on disclosure." 127 Nev. at 882, 266 P.3d. at 629.

4 In evaluating claims of confidentiality, courts must take the NPRA's emphasis on
5 disclosure into consideration—and it must also be considered in evaluating whether Metro
6 has established a likelihood of success or raises a serious legal question. The Nevada
7 Legislature has expressly declared that the "[t]he purpose of [the NPRA] is to foster
8 democratic principles by providing members of the public with access to inspect and copy
9 public books and records to the extent permitted by law." Nev. Rev. Stat. § 239.001(1). To
10 further this vital purpose, the Legislature mandated that the NPRA's "provisions of this
11 chapter must be construed liberally to carry out this important purpose" (Nev. Rev. Stat. §
12 239.001(2)) and that "[a]ny exemption, exception or balancing of interests which limits or
13 restricts access to public books and records by members of the public must be construed
14 narrowly." Nev. Rev. Stat. § 239.001(3).

15 Evaluating its arguments with these mandates in mind, Metro did not and cannot
16 establish by a preponderance of the evidence that any claim of confidentiality applies, let
17 alone that any claim of confidentiality outweighs the presumption in favor of disclosure.
18 Further, even if the stringent test for withholding were satisfied, the NPRA bars wholesale
19 withholding where lesser measures can be taken. *See* Nev. Rev. Stat. § 239.010(3) (requiring
20 redactions).

21 Metro never bothered to sufficiently establish its legal burden (let alone by a
22 preponderance of the evidence) and this Court should not permit it to do so, appeal, and then
23 demand a stay. Notably, Metro is resisting disclosure, and is asking this Court to stay
24 production of, *every single document that Petitioners have requested in connection with 1*
25 *October*. Yet Metro fails to even discuss the specific records at issue and explain how it will
26 be harmed or is likely to succeed on the merits with regard to any specific records. It is
27 impossible to imagine that the Nevada Supreme Court will reverse decades of precedent,
28 ignore the plain text of the NPRA, overlook the complete dearth of evidence, and find on

1 appeal that Metro overcome the presumption of access and met its heavy burden *by a*
2 *preponderance of the evidence.*

3 As noted above, Metro has failed to even produce a log of the records at issue—
4 and suddenly refused to obey this Court’s order to produce one in support of its Motion for
5 Reconsideration. Metro should have taken this case this seriously from the start and should
6 not have delayed providing specific responses to requests, unnecessarily complicated this
7 litigation, filed a premature notice of appeal, and then file an unsupported Motion to Stay to
8 avoid the application of the NPRA. Such delay tactics and the apparent belief in an
9 entitlement to a stay are not tenable in light of the legislative mandates contained in the
10 NPRA—including the mandate that this Court expedite proceedings to enforce its terms.

11 **IV. CONCLUSION**

12 For the reasons set forth above, Metro’s Motion for Stay must be denied.

13 DATED this the 9th day of April, 2018.

14 /s/ Margaret A. McLetchie

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Counsel for American Broadcasting Companies, Inc., The

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Media I, LLC, d/b/a KSNV-TV, Los Angeles Times

Communications, LLC, The New York Times Company, and

WP Company LLC d/b/a The Washington Post

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 9th day of April, 2018, pursuant to Administrative Order
3 14-2 and N.E.F.C.R. 9, I did cause a true copy of the foregoing JOINT OPPOSITION TO
4 LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR STAY
5 PENDING RESOLUTION ON APPEAL ON AN ORDER SHORTENING TIME in
6 *American Broadcasting Companies, Inc., et al. v. Las Vegas Metropolitan Police*
7 *Department*, Clark County District Court Case No. A-17-764030-W, to be served
8 electronically using the Odyssey File & Serve electronic filing service system, to all parties
9 with an email address on record.

10 I hereby further certify that on the 9th day of April, 2018, pursuant to Nev. R. Civ.
11 P. 5(b)(2)(B), I mailed a true and correct copy of the foregoing JOINT OPPOSITION TO
12 LAS VEGAS METROPOLITAN POLICE DEPARTMENT'S MOTION FOR STAY
13 PENDING RESOLUTION ON APPEAL ON AN ORDER SHORTENING TIME by
14 depositing the same in the United States mail, first-class postage pre-paid, to the following:

15 Craig R. Anderson, Nick D. Crosby, and Jackie V. Nichols
16 MARQUIS AURBACH COFFING
17 10001 Park Run Drive
18 Las Vegas, NV 89145
19 Email: canderson@maclaw.com; ncrosby@maclaw.com; jnichols@maclaw.com
20 *Attorneys for Las Vegas Metropolitan Police Department*

21 This document applies to Case No. A-17-764030-W.

22 /s/ Pharan Burchfield
23 EMPLOYEE, McLetchie Shell LLC
24
25
26
27
28

1 **DECLARATION OF MARGARET A. MCLEITCHIE**

2 I, MARGARET A. MCLEITCHIE, declare, pursuant to Nev. Rev. Stat. § 53.330,
3 as follows:

4 1. I have personal knowledge of the facts set forth below, and, if called as a
5 witness, could testify to them.

6 2. I am an attorney duly licensed to practice law in Nevada.

7 3. I am a partner at the law firm of McLetchie Shell, LLC, and I am lead
8 counsel for the Las Vegas Review-Journal in *American Broadcasting Companies, Inc., et al.*
9 *v. Las Vegas Metropolitan Police Department*, Clark County District Court Case No. A-17-
10 764030-W consolidated with Case No. A-17-764169-W.

11 4. I am making this declaration to authenticate documents attached as exhibits
12 in support of Joint Opposition to the April 3, 2018, Motion for Stay Pending Resolution on
13 Appeal on an Order Shortening Time filed by the Las Vegas Metropolitan Police Department
14 on an Order Shortening Time and to verify factual representations contained in the
15 Opposition.

16 5. The Las Vegas Metropolitan Police Department failed to give Petitioners
17 any advance notice of the Order Shortening Time. While at a hearing in another matter,
18 Petitioners' counsel asked Las Vegas Metropolitan Police Department's counsel about the
19 status in this case and learned, for the first time, that the then-proposed Order on Shortening
20 Time had been submitted to chambers.

21 6. Petitioners' counsel expressed concern about not having received as much
22 notice as possible and asked for a copy of what had been submitted. Las Vegas Metropolitan
23 Police Department's counsel agreed to do so but never followed through.

24 7. Exhibit 1 is a true and correct copy of the March 14, 2018 letter from
25 counsel for Las Vegas Metropolitan Police Department, Ms. Nichols, which was served
26 electronically using the Eighth Judicial Court's electronic service system, Odyssey File &
27 Serve.

28 ///

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1 8. I certify and declare under the penalty of perjury under the law of the State
2 of Nevada that the foregoing is true and correct, and this declaration was executed at Las
3 Vegas, Nevada, the 9th day of April, 2018.

4 
5
6

MARGARET A. MCLETCHIE

MCLETCHIE

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EXHIBIT 1



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OF COUNSEL

March 14, 2018

Via E-Service

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Via E-Service

Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
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Re: American Broadcasting Companies, Inc., et al. v. LVMPD et al.
Case No.: A-17-764030-W
Case No.: A-17-764169-W
Our File No. 14687-102

Dear Counsel:

As you know, on March 13, 2018 the parties held a meet and confer conference pursuant to the Court's order at the March 7, 2018 hearing, as well as the March 2, 2018 order, to discuss the rolling disclosure of public records. The following records are not in the legal custody or control of the Las Vegas Metropolitan Police Department ("LVMPD").

Dash Cam. LVMPD officers do not have Dash Cams installed in their vehicles. Thus, LVMPD does not have any documents related to this request.

Evidence Logs. The Federal Bureau of Investigation ("FBI") created and maintains the evidence logs relating to the 1 October incident. This includes any information obtained on the weapons of Steven Paddock.

Emergency Purchase Orders/No-Bid Contracts. LVMPD did not utilize emergency purchase orders or no-bid contracts as a result of the 1 October incident.

Search Warrant Returns/Affidavits of Probable Cause. It is LVMPD's position that this information has already been provided to Petitioners as a result of Judge Cadish's ruling in District Court Case No. A-17-764028-W. Because of this disclosure, the parties have agreed reproduction of these documents are unnecessary. To the extent Petitioners discover additional search warrants, returns, and/or affidavits of probable exist or information contained in the production provided by Judge Cadish is not included, please let us know and we will search for and provide that information.

Joel E. Tasca, Esq.
Justin A. Shiroff, Esq.
Margaret A. McLetchie, Esq.
Alina M. Shell, Esq.
March 14, 2018
Page 2

CCTV Videos. I misspoke on the telephone conference. We have our public CCTV video footage and there is approximately 390 hours total.

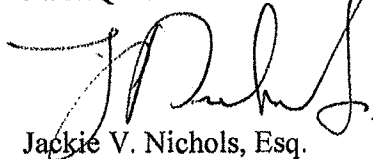
With respect to "interview reports" requested by Petitioner CNN, LVMPD interprets this to mean witness statements and incident reports provided by victims. Please let us know if there are any additional reports CNN intended to encompass under interview reports.

During the conference, we also discussed the significant amount of data these requests encompass. LVMPD estimates that data equates to tens of Terabytes in total, in the actual number is yet to be determined. As we discussed, this includes approximately 750 hours of body cam footage and 2,000 911 calls. This data is located on multiple electronic systems within LVMPD. In essence, LVMPD will need to first transfer all of this information on a separate server to begin reviewing and analyzing these documents for redaction purposes prior to disclosure. Likewise, this information will most likely need to be transferred to an outside server for production purposes.

Of course, as I continue to receive information and updates, I will keep Petitioners informed of the same. In the meantime, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

MARQUIS AURBACH COFFING



Jackie V. Nichols, Esq.

JVN:kb

EXHIBIT 11

A-17-764030-W

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Writ of Mandamus

COURT MINUTES

March 12, 2018

A-17-764030-W American Broadcasting Companies, Inc., Plaintiff(s)
vs.
Las Vegas Metropolitan Police Department, Defendant(s)

March 12, 2018 3:00 AM Minute Order

HEARD BY: Scotti, Richard F. **COURTROOM:**

COURT CLERK: Natalie Ortega

JOURNAL ENTRIES

- The Judge in this Court, Department 2 (Judge Scotti), remains firmly committed to insuring that he acts with utmost impartiality and that he completely avoids any personal bias or prejudice. Nevertheless, the circumstances surrounding this case create a community perception that the Court's impartiality might reasonably be questioned. As the parties may know, the Las Vegas Review Journal has publicly and harshly criticized this Court over its discovery rulings in the related case involving the October 1 massacre, Hartfield v. Office of the Clark County Coroner, etc., Case No. A-18-768781.

Rule 2.11 of the Revised Nevada Code of Judicial Conduct provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." The Las Vegas Review Journal, through its publications, has created a situation where the public reasonably might believe that a person in Judge Scotti's shoes would lack 100% impartiality.

Rule 2.11(C) allows the Court to "ask the parties and their lawyers to consider, outside the presence of the judge and court staff, court officials and others subject to the judge's direction and control, whether to waive disqualification." The Court hereby makes that request. The Court DIRECTS each party to advise this Court in writing, no later than noon, **Friday, March 16, 2018**, whether it elects to waive or not waive disqualification. If ALL parties do not waive disqualification, then this Court shall enter an order of disqualification by Monday, March 19, 2018.

IT IS SO ORDERED.

Richard Scotti
District Judge

PRINT DATE: 03/12/2018

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Minutes Date: March 12, 2018

A-17-764030-W

CLERK'S NOTE: This minute order was electronically served by Courtroom Clerk, Natalie Ortega, to all registered parties for Odyssey File & Serve. ndo/3/12/18